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Supreme Court, U.S.
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Case No. ______ OFFICE OF THE CLERK

In The Supreme Court
Of The United States

October Term 1994

In Re RONALD BRANSON,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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May 23, 1995

119pp

QUESTION PRESENTED FOR REVIEW

Whether the Ninth Circuit Court of Appeals lacked jurisdiction and discretion to proceed with the appeal under 28 U.S.C. §1291 in USCA Case No. 94-55951 after failing and refusing to identify and address the facts that might reasonably cause an objective observer to question its impartiality in the handling of said appeal, brought by motion under Title 28 U.S.C. §455(a).

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USSC Rule 14.1(b) is not applicable. Petitioner is the only appearing party in USCA Case No. 94-55951, as appellant. All four defendants in the original action in USDC Case No. CV 94-1932-R defaulted; the district judge intervened and arbitrarily blocked entry of default which is one of the issues on appeal. However, the issues on appeal are not reached by this petition. The Court of Appeals has improvidently allowed the U.S. Attorney to participate in the appeal as counsel for "appellees" despite the fact that they made no prior appearance in district court. This improvident appearance on behalf of "appellees" is one of the issues underlying the questioning of impartiality of the Court of Appeals under 28 U.S.C. §455(a) discussed in this petition. The question is unresolved. For informational purposes only, the names of the defaulting defendants are:

BETTY B. FLETCHER, personal capacity;
DIARMUID F. O'SCANNLAIN, personal capacity;
ANDREW J. KLEINFELD, personal capacity;
WILLIAM D. KELLER, personal capacity.

Petitioner contends they have no standing to appear as "appellees."
There are no parent companies or subsidiaries.

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United States Reports
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GROUNDS FOR JURISDICTION

(1) The date the memorandum decision of the Court of Appeals was filed is February 27, 1995. Said memorandum is the product of usurpation of power by the court and its merits are bogus and irrelevant. Rehearing was purposely **not** requested; nevertheless the Court of Appeals by further usurpation and judicial fiat denied a ***non-existent*** "petition for rehearing" so-called by the court, on April 13, 1995. (Merits of the memorandum are not reached by this petition.)

(2) The statutory provision which confers jurisdiction on this Court for this petition is Title 28 U.S.C. §1651(a).

AGAINST WHOM RELIEF IS SOUGHT

Pursuant to USSC Rule 20.3(a) petitioner states:

(1) Name and title of every person against whom relief is sought:

MANUEL L. REAL, District Judge, U.S.Dist.Ct. (L.A.)
JOHN G. DAVIES, District Judge, U.S. Dist.Ct. (L.A.)
DOROTHY W. NELSON, Circuit Judge, Ct.of Apls (9th Cir)
CYNTHIA HOLCOMB HALL, Circuit Judge, Ct.of Apls (9th Cir)
STEPHEN S. TROTT, Circuit Judge, Ct.of Apls (9th Cir)
MARY M. SCHROEDER, Circuit Judge, Ct. of Apls, (9th Cir)
WILLIAM C. CANBY, JR., Circuit Judge, Ct of Apls, (9th Cir)
EDWARD LEAVY, Circuit Judge, Ct. of Apls, (9th Cir).

(2) The relief sought herein is not available in any other court. The appeal itself remains suspended until the collateral issue of the proper procedure under Title 28 §455(a) regarding recusal of the Ninth Circuit in this appeal is resolved

by this Court, since the Ninth Circuit C/A refuses to identify and address the facts presented under the statute for recusal.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

Constitutional Provisions:

Article III, Section 2, Clause 2
Due Process Clause of the Fifth Amendment

Federal Statutes:

28 U.S.C. § 453
28 U.S.C. § 455(a)
28 U.S.C. §1651(a)

Code of Conduct for United States Judges
(pertinent portions)

[Pertinent texts not quoted in the petition are set forth in the Appendix]

STATEMENT OF THE CASE

Petitioner herein is referred to as "plaintiff" to conform to the record. "CR" is clerk's record in USDC No. CV 94-1932-R; "AB" is appellant's brief; "APP" is Appendix (attached); "C/A" Court of Appeals.

This petition is the ***second round*** through the federal courts in an attempt to obtain redress of grievance in the federal judicial system, commencing 5/8/87 when the initial complaint was filed [USDC No. 87-03003-WDK] culminating in petitioning this Court for a writ of certiorari (§1254(1)) and concurrently for a writ of mandamus (§1651) 12/26/92, both of which petitions were summarily denied 3/29/93 [USSC No. 92-1311 and 92-1337, respectively]. That ended ***round one.***

Thereafter, on 4/6/93 plaintiff filed a declaration in district court [No. CV 87-03003-WDK] regarding non-waiver of rights under the U.S. Constitution and laws of the United States, and notice of in-limbo status (no legal conclusion) of this federal case. Therein the facts surrounding the post-denial circumstances are stated. It was then, similar to now, a question of jurisdiction of the C/A to act under the statutes and rules in the appeal then pending [USCA No. 91-55819]. This Court (USSC) had an obligation to address the jurisdictional issue, but refused to do so. Consequently, the case is left without remedy. The case has now come full circle-- still no remedy.

Because of the refusal of this Court to bring the necessary relief in round one, plaintiff was forced to file another complaint naming the district judge and the three circuit judges who usurped the power of the federal courts in round one, asking for damages under *Bivens* and for injunctive relief as described in *Larson* shown in the title of the complaint, the underlying case here in round two. [USDC No. CV 94-1932-R filed 3/28/94].

The jurisdictional basis for round two in district court is the general federal-question jurisdiction under 28 U.S.C. §1331 [CR 1/3:13] seeking damages and injunctive relief [CR 1/3:4-5] against the federal judicial officers as **individuals**, each being named in his/her **personal capacity** [CR 1/2:2-3; 2:10-11], for the deprivation of liberty and property without due process of law directly under the Due Process Clause of the Fifth Amendment to the U.S. Constitution [CR 1/3:5-8]. The theory of the case upon which plaintiff expected it to be litigated is a procedural due process claim by acts and omissions ***ultra vires*** the delegated authority of the defendants in their individual capacities, **not** in their judicial capacities. This theory is supported by *Bivens v. Six Unknown Fed. Narcotics Agents* (1971) 403 U.S. 388 for damages against federal officers as **individuals**, and *Larson v. Domestic & Foreign Commerce Corp.* (1949) 337 U.S. 682 for injunctive relief, also against federal officers as **individuals**.

The complaint (round two) was filed 3/28/94, plaintiff having paid all court fees; jury trial was demanded; summons was issued. [CR 1]. The case was assigned to district judge Manuel L. Real without reference to a magistrate judge for initial review and recommendation. Despite plaintiff having paid full court fees entitling him to full and fair procedures under the Federal Rules (see *Neitzke v. Williams* (1989) 490 U.S. 319, 330), Judge Real saw fit to dismiss the complaint ***sua sponte*** [CR 2] just seven court days after filing and before process was served on defendants. Despite the fact that the complaint alleges that the defendants are sued only in their personal capacity for acts and omissions committed ***ultra vires*** their authority and therefore **non-judicial in nature** [CR 1/2:1-4; 1/2:10-12], Judge Real based the dismissal on "judicial immunity" [CR 2], disputing those clear allegations.

Plaintiff was caught entirely by surprise, even before a reasonable opportunity to serve the summons and complaint was allowed: [CR 3/14:14-16]. Judge Real has, on at least two prior occasions, been admonished by the Ninth Circuit for taking the same kind of premature action. See *Clinton v. Los Angeles County, et al.* (9th Cir.1970) 434 F.2d 1038, citing *Potter v. McCall* (9th Cir.Nov.4, 1970) 433 F.2d 1087; *Dodd v. Spokane County* (9th Cir.1969) 393 F.2d 330; *Armstrong v. Rushing* (9th Cir.1965) 352 F.2d 836; and *Harmon v. Superior Court* (9th Cir.1962) 307 F.2d 796. See also *California Diversified Promotions, Inc. v. Musick* (9th Cir.1974) 505 F.2d 278, 281, 284. In both *Clinton* and *California Diversified*, Judge Real was reversed and the case remanded for proper procedure in accordance with the well-established precedent in the Ninth Circuit.

Plaintiff filed a motion to disqualify Judge Real on 4/28/94 [CR 4] pursuant to 28 U.S.C. §144. That motion was immediately referred to Judge John Davies [CR 6], although plaintiff did not receive notice of the referral until 5/6/94 in the mail [CR 9/9:10-13], the same day Judge Davies denied the motion to disqualify [CR 8]. Plaintiff did not become aware of that denial until 5/11/94 by mail. Meanwhile on 5/9/94 plaintiff filed a supplemental declaration [CR 7] informing Judge Davies that he had filed a request for criminal prosecution against Judge Real under 18 U.S.C. §242 with the U.S. Attorney's Office, Criminal Division, in Los Angeles on 5/2/94. [CR 9/9:14-21]. That information crossed in the mail with his denial of disqualification, and immediately after receiving notice of the denial on 5/11/94, plaintiff filed a motion for reconsideration on 5/12 [CR 9].

Judge Davies denied that motion [CR 15] leaving the way clear for Judge Real to continue his repeated pattern of procedural violations. Then pending was a motion to vacate the dismissal order under Rule 59(e) FRCvP filed 4/21/94 [CR 3] and as expected, Judge Real arbitrarily denied the motion on 6/6/94 [CR 18] offering no legal or factual basis for doing so.

During the time in which the order of dismissal was suspended by the filing of the Rule 59(e) motion on 4/21/94 [CR 3], plaintiff served process on all parties each in his personal capacity with a summons marked "Non U.S. Govt". Proofs of service were filed 5/12/94 [CR 10,11,12,14]. **No responses were filed by any defendant at any time.**

On 5/31/94 plaintiff lodged an application for entry of default against all defendants under Rule 55(a) FRCvP. The clerk returned all papers stating "Case was closed by Judge Real on 4/7/94" [CR 17, back of p.6]. On 6/6/94 plaintiff filed an objection to the refusal to enter default stating that the case was not closed as of 5/31 while there was pending a timely Rule 59(e) motion suspending the order of dismissal. The clerk forwarded the objection to Judge Real which he signed on 6/9/94 and instructed the clerk to refuse to enter default and return all documents [CR 22]. All papers were again returned rejecting entry of default, disregarding the lawful effect of the Rule 59(e) motion on the dismissal as of 5/31/94.

Consequently, plaintiff was left with no alternative but to appeal the denial of the Rule 59(e) motion [CR 18], bringing the issues on appeal of dismissal procedure, judicial immunity, lack of findings, disqualification, and default. Notice of appeal was filed 6/28/94 [CR 23] pursuant to FRAP 4(a)(4). However, as stated in appellant's brief, the record discloses that there is a very serious conflict of interest with the district court doing everything to thwart litigation of this case, since it involves their "brethren." The conflict is even more pronounced with the Ninth Circuit since three of the four defendants are among "their own" and, despite the fact that Judge Real's similar conduct had been reversed at least twice before, those cases didn't involve Ninth Circuit colleagues. [AB 12:8-13]. The Ninth Circuit now joins the district court in actively and consciously thwarting this litigation.

The issues brought on appeal in round two aren't reached at this time. This petition addresses the collateral issue of the qualification of the Ninth Circuit Court of Appeals to decide this appeal based on several improprieties apparent on the face of the record and the failure and refusal of the C/A to identify and address those issues of impropriety which were brought by plaintiff/appellant's motion for recusal under 28 U.S.C. §455(a).

The opening paragraph of the appellant's brief is titled "Request For Recusal of Ninth Circuit In This Appeal" [AB 1:1] discussing the conflict of interest of the district court judges involved and how it has affected procedural due process, and how the conflict is anticipated to affect the appeal. "Now that the case is on appeal, the conflict of interest is not diminished in the Ninth Circuit. Despite the fact that Ninth Circuit precedent reversed Judge Real more than once for the same type of conduct as has occurred in this case, the fact that fellow colleagues of those who would decide this appeal are named as defendants will undoubtedly separate this case from those already established by published decisions. Plaintiff has a cause of action which the federal court to date has refused to recognize or process as a case. Judicial ethics and fairness dictate that this case be referred to another appellate jurisdiction." [AB 1:10-16].

The appellate brief was not served on any counsel, since the defendants defaulted-- no appearance was made. Nevertheless, plaintiff was contacted by phone 11/10/94 by the U.S. Attorney's Office, and a message was left stating that they were requesting an extension of time to file an appellees' brief with the Ninth Circuit. On 11/12/94 plaintiff (appellant) prepared and signed a declaration objecting to any such appearance in this appeal, mailing it that day by certified mail to the C/A. [APP A-7]. Immediately after mailing that declaration, plaintiff received a letter from Donna J. Everett, Assistant U.S. Attorney, stating that the Ninth Circuit C/A did in fact grant the phone extension to file the respondents' brief, setting forth the revised briefing schedule. [APP A-11].

Upon receiving that information, indicating that the Ninth Circuit indeed invited the U.S. Attorney into this appeal to represent the defaulting defendants as "appellees", plaintiff prepared a motion for recusal of the Ninth Circuit pursuant to 28 U.S.C. §455(a) and mailed it by certified mail on 11/16/94. [APP A-12]. That recusal motion is the key document in this proceeding. Until that motion is properly determined according to procedural law, this case cannot proceed to a conclusion under law.

While the recusal motion was pending before the C/A, plaintiff received a red-cover brief entitled "Appellee's Brief" dated 11/28/94 [APP A-24], the U.S. Attorney representing itself to be "Attorneys for Federal Defendants-Appellees" although the defendants never appeared in district court, and the blocking of entry of their default is an open issue on appeal. While not acknowledging the legal validity of said brief, in order to preserve the right to oppose the brief if and when appellees' standing to appear is determined by a disinterested court (not the Ninth Circuit) to be valid as a matter of law, on 12/6/94 plaintiff sent in a Reply To Questionable Appearance Of Defaulting Defendants/Appellees stating that the recusal motion was unopposed and the question of standing of appellees to appear is unresolved. [APP A-25].

Because of this serious impropriety involving the U.S. Attorney in Los Angeles, on 12/9/94 plaintiff sent to U.S. Attorney General Janet Reno an Affidavit Re Criminal Conduct of District Judge Manuel L. Real and District Judge John G. Davies and Endorsement Thereof By U.S. Attorney Nora M. Manella (Los Angeles) and Assistant U.S. Attorney Donna J. Everett [APP A-28 (minus exhibits)]. The reason for the affidavit is stated in ¶5 "That this Affidavit is directed to the United States Attorney General due to the fact that the United States Attorney (Nora M. Manella) to whom the original application was made for criminal prosecution of the conduct therein described is now relying upon the same criminal act complained of by your affiant as hereinafter set forth." And ¶6 "That the conflict of interest of U.S. Attorney Manella is manifest by being both the prosecutor and defender of the same criminal conduct." That criminal conduct is being defended not only by the U.S. Attorney, but also by the Ninth Circuit C/A --the same court that previously reversed and remanded Judge Real for the same conduct in those cases.

Shockingly, plaintiff received an order in the mail filed 12/9/94 [APP A-2] by Circuit Judges D.W. NELSON, HALL and TROTT which, among other improprieties, ***summarily denied the motion for recusal*** without identifying and addressing the facts setting forth the judicial misconduct and conflicts of interest presented in said motion as required to do under §455. On 12/15/94 plaintiff sent in his Exception To Order Filed Dec. 9, 1994 and Motion For Rehearing of Recusal Motion. [APP A-37]. **That order (Dec.9) is the order in respect of which the writ is sought herein** (see USSC Rule 20.3(a)) ***--all subsequent actions*** by the Ninth Circuit beyond §455 procedural mandates being without jurisdiction, and therefore bogus, null and void and irrelevant surplusage, compounding the problems that already exist and remain unaddressed by the Ninth Circuit court to this day. This is the culmination of the judicial fiat that is taking place unabated for the past ***eight years*** throughout the federal judicial system!

The motion for rehearing of the denial of the recusal motion is key to this petition, particularly Point #4 entitled "The court failed to carry out the intent of Congress under 28 U.S.C. §455(a)." [APP A-43]. That portion is brought into the Argument *infra*.

The refusal of the Ninth Circuit judges to address the acts of impropriety and conflicts of interests presented in the motion for recusal under §455(a), in further violation of law (see *Liljeberg v. Health Services Acquisition Corp.* (1988) 486 U.S. 847, 865), has become conduct so egregious as to cause plaintiff to file on 12/17/94 a Complaint of Judicial Misconduct with the Judicial Council of the Ninth Circuit (still the **Ninth Circuit**) pursuant to 28 U.S.C. §372(c). [APP A-48 (minus exhibits)].

The reason for bringing the complaint of misconduct to the Judicial Council was not only to call to account the misconduct itself, but, more urgently, it was an emergency cry for help-- for the Council to ***immediately step in*** and halt the rampage of these renegade judges and bring reason to bear before the out-of-control matter got any worse as it was cocksure to do! As stated in ¶13 of the supporting declaration thereto, plaintiff anticipated (correctly so) that the Ninth Circuit judges involved would disregard the motion for rehearing by denying it without comment and continue its "avoidance maneuvers" by evading the facts and foreclosing this motion redress, and requested that the Judicial Council act to correct the existing problems before they become further compounded. [APP A-52]. (See Rule 1(a) Judicial Council Rules [APP A-83].) However, the Judicial Council did nothing to stop the onslaught of judicial misconduct and procedural violations that continued unabated. No controls were exercised to prevent the runaway judicial fiat that has been plaguing this case for ***eight years!***

With the "green light" given to the C/A to proceed with business as usual by the inaction of the Judicial Council, as aforesaid, the next bogus step by the C/A was taken 1/12/95, four weeks after the complaint of judicial misconduct was submitted to the Judicial Council and while the motion for rehearing the recusal motion was still pending before the C/A, by a letter from the court to "all parties" announcing that the Ninth Circuit court is considering submission of the appeal without oral argument. [APP A-53]. Plaintiff immediately sent by certified mail to the Ninth Circuit on 1/18/95 his Objection To Submission of Appeal [APP A-54] stating by declaration that while not waiving his right to oral argument at the appropriate time, the appeal cannot be submitted until the questions raised in the motion for recusal are addressed and resolved; and that plaintiff is filing concurrently a Supplement to the Complaint of Judicial Misconduct alleging this further compounding of judicial misconduct. [APP A-56]. The Supplement was mailed 1/18/95 and is self-explanatory. [APP A-58].

The next ersatz move by the C/A was the filing of an order on 1/19/95, which, as correctly predicted by plaintiff, denied the motion for rehearing of the recusal motion without comment about the facts raised therein. [APP A-6]. Further exhibiting its deceit and maliciousness, the C/A mislabels plaintiff's motion as one "for reconsideration of the December 9, 1994 order", the court saying ***nothing about the recusal motion***, nor does it refer to plaintiff's motion as what it clearly was-- one for **rehearing**, not for reconsideration. There was nothing to ***re***consider since there was **no consideration** in the first place. The recusal motion under §455(a) was simply sloughed off altogether. Further, as if any previous motions were, in actuality, "entertained" by the court ***at all,*** the C/A slammed the door on any further motions regarding the December 9th order-- running away from their judicial responsibility instead of facing it as required under the law, further exacerbating and compounding their judicial misconduct.

To maintain the integrity of the record, at least, on

1/23/95 plaintiff sent an Exception To Order Filed January 19, 1995 [APP A-61] based on the identical bases as the Exception to the December 9th Order, since **none** of the previous points presented was entertained by the C/A. For the record, plaintiff summarized the facts of misconduct and impropriety raised in the recusal motion remaining as untouched by the C/A as they were when first presented in the §455(a) motion [APP A-62,-63,-64]. They are now presented to this Court for corrective action.

Plaintiff again sent out a cry for help in the closing paragraph of the 1/23 Exception: "That in the interest of halting the repeated and continuing judicial misconduct now going on herein, I am specifically requesting, in my Second Supplement to the Complaint of Judicial Misconduct, that the Judicial Council of the Ninth Circuit ***stay all further conduct until this matter is straightened out,*** thereby avoiding the need for constantly 'chasing' one misconduct after another with a corresponding complaint to the Judicial Council." [APP A-65, -66 (emph. in orig.)].

The Second Supplement was mailed on 1/23/95 [APP A-67] in which plaintiff stated "That as the case now stands, the Court (C/A) is already threatening to 'submit [this] case without oral argument' to which I have objected and made part of my first Supplement; that as I stated in Paragraph 6 of my supporting declaration to that Objection 'the Ninth Circuit Court, in its current state of denial, is now railroading this appeal through a ***sham briefing schedule*** and a ***sham submission of the case*** while the serious questions raised are ignored by the Court and remain unresolved in violation of my rights to fair and lawful procedures' **and which is now a certainty** as evidenced by the latest move --the January 19th Order.... ...That unless the Judicial Council intervenes, further disaster and injustice is sure to result." [APP A-69 (emph. in orig.)]. ***STILL***-- no action by the Judicial Council!

With the "green light" still on, the predictable occurred. The appeal was indeed railroaded through by the C/A as if no questioning regarding its impartiality nor about its propriety in the procedural handling of this case existed. Without intervention by the Judicial Council, the C/A forged ahead, ignoring the facts raised under §455(a), by nevertheless submitting the appeal on 2/21/95, and filing its Memorandum Not For Publication on 2/27/95 [APP A-3] which purportedly and falsely disposes of the appeal. The face sheet of that bogus document ***fraudulently represents*** in a footnote that plaintiff requested oral argument: "...Branson's request for oral argument is denied." Also, fn.1 repeats the improper procedure of disposing of the recusal motion (now acknowledged as "renewed") by the word "denied" leaving the facts of impropriety unaddressed which was the reason for "renewing" the motion in the first place. Plaintiff's exception to the January 19, 1995 order is ***falsely labeled*** an "objection" by the C/A in the same footnote and likewise "denied."

Again for purposes of maintaining the integrity of the record, plaintiff sent in on 3/9/95 his Exception (not objection) to Memorandum Filed February 27, 1995 [APP A-71] on the identical bases as the Exception to the December 9th Order and the Exception to the January 19th Order which are again set forth on the record. [APP A-72, -73]. Those matters are still untouched by the court and ***still pending now***.

Concurrently on 3/9/95, plaintiff mailed in his Third Supplement to Complaint of Judicial Misconduct [APP A-76], being forced to chase yet another act of misconduct and improper procedure which plaintiff had previously asked in his Exception to the January 19th Order that the necessity thereof be averted by a stay of proceedings. [APP A-66]. The Council has remained mute throughout.

The Third Supplement, together with the Exception to the February 27th Memorandum, both set forth on the record the current unresolved status of this case. To make it **clear on the record** plaintiff specifically stated in the Exception: "10. That clearly I am precluded by law from attacking the merits of the decision or seeking relief from the Ninth Circuit Court in this

Appeal, No. 94-55951...." [APP A-75]; and in the Third Supplement: "15. That I cannot take any action regarding the 'merits' of the purported decision, **such as a petition for rehearing,** while the current issues stated herein remain unresolved; the merits of the decision are not reviewable." [APP A-79, -80 (emph.added)].

By Order filed April 13, 1995 the C/A states: "The 'Exception to Memorandum Filed February 27, 1995,' **which we construe as a petition for rehearing**, is denied." [APP A-5 (emph.added)]. That is the "cherry" adorning the crest of the dung-heap accumulated after eight years of interminable judicial dementia by the federal judicial system in this case.

* * *

ARGUMENT

The Ninth Circuit Court of Appeals did not have jurisdiction to proceed with this appeal in the absence of identifying and evaluating the facts questioning its impartiality in the Motion for Recusal under Title 28 U.S.C. §455(a).

"Power corrupts, and absolute power corrupts absolutely." As the previous factual synopsis shows, and as the record itself reflects, the judicial system is way out of control-- it doesn't work! It has become a public disgrace! Plaintiff (petitioner herein) has been seeking a judicial remedy for his petition of grievances for eight solid years, and to date, not one of his federal questions has been addressed by the courts. Facts presented are either ignored altogether or are twisted beyond recognition and conclusions are based on those false representations. Words and intents are placed in plaintiff's mouth by the opposition, and the courts readily adopt it as truth. The courts routinely misinterpret plaintiff's documents and then treat them according to their misinterpretation. Procedures that could not be taken under law, according to the facts of the case, are arbitrarily declared by the courts as having been taken-- and then fraudulently denied under that pretense. Plaintiff's real opponents are the **federal judiciary** who are unaccountable, arbitrary, arrogant, dishonest, and treasonous. Even criminal conduct by the judiciary is ignored, as this record also shows. [See APP A-35].

Constitutional provisions and safeguards are ignored; cited case law even by the U.S. Supreme Court is ignored; federal statutes are ignored; federal rules are ignored. The resulting monstrosity that emerges as a "decision of the court" is ordered "**Not For Publication**" so that the inconsistencies with established law can remain hidden and undetected by the people. The decision cannot be used as precedent in any other case-- of course not, because it doesn't comport with law! What good are laws if they are ignored by the courts? As go the courts, so goes the nation.

Are we a government of laws or of men? "The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." *Marbury v. Madison* (1803) 5 U.S. 49, 59. What are we ***now?*** We are now in the same despotic condition as Congress found when they signed the Declaration of Independence: "In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered by repeated injury." They declared: "But when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security." (July 4, 1776).

USDC Case No. CV 94-1932-R, the underlying district court case here, should not have had to be brought in the first place, bringing with it all the subsequent judicial misconduct and procedural violations shown here. It was only because this Court walked away from Round One, refusing to take any corrective measures in Case No. 92-1337 for mandamus regarding the plain usurpation of power by the district court in Case No. CV 87-03003-WDK which was brought to the attention of the C/A in appeal No. 91-55819 and prior to that, by petition for mandamus in Case No. 91-70099; this Court also abandoned accompanying Case No. 92-1311 for certiorari, refusing to address the question "Whether the Ninth Circuit Court of Appeals lacked jurisdiction and discretion to act under Title 28 U.S.C. §1291 and FRAP Rule 4(a)(1) in USCA Case No. 91-55819, by ignoring the requirements of 'finality' under §1291 within the meaning of *Budinich* (486 U.S. 196); by ignoring the Usurpation of Power issue which has never been addressed; by ignoring the requirements of Title 28 U.S.C. §2107 and Rule 4(a)(6) FRAP, and Rules 58 and 79(a) FRCiv.P; and by ignoring Rule 4(a)(4) FRAP and the pending Rule 59(e) motions...." With those two petitions left hanging, plaintiff had no alternative but to bring Round Two in his quest of a judicial remedy for his federal claims, the culmination of which this petition represents. After seeking for eight years, there is ***still*** no remedy! See *Marbury, supra.*

"We are obligated to determine the jurisdiction of the Court of Appeals to entertain the appeal if a question thereto exists." *Liberty Mutual Ins. Co. v. Wetzel* (1976) 424 U.S. 737, 740. This Court did not perform that obligation when previously petitioned. "With whatever doubt, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution." *Ex parte Young,* (1908) 209 U.S. 123, 143. *Ergo,* has this Court not, by its own terms, committed treason against the Constitution? Nevertheless, the Court, being ***oblivious to law,*** is certainly oblivious to **treason** --even as it is to its own rulings!

Congress provided that the federal judiciary shall take an oath of office pursuant to Title 28 U.S.C. §453: "Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: 'I, _____ ______, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully ***and impartially*** discharge and perform all the duties incumbent upon me as _______ under the Constitution and laws of the United States. So help me God.'" (emph. added). This petition is directed to the refusal of the C/A to address impartiality --an element of the oath of judicial office.

Each and every judge who participated in this case repeated the above words, raising his right hand; but it is quite obvious that their oath isn't taken seriously. With no accountability to be concerned about, these judges treated it as form and ritual only --an out-and-out mockery! "So help me God" --pure blasphemy!

Congress also provided that under certain circumstances judges are to be disqualified, when it enacted Title 28 U.S.C. §455 which states under subsection (a): "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Plaintiff questioned the impartiality of the C/A by requesting in the opening paragraph of his appellate brief in Appeal No. 94-55951 that the Ninth Circuit Court of Appeals recuse itself from deciding this appeal on the following factual basis and circumstances:

"The defendants in this case involve three Ninth Circuit judges and a district judge in Los Angeles. Although the defendants are being sued in their personal capacity as individuals, and not as judicial officers, they are still friends, acquaintances, colleagues, and members of the judicial profession. The record shows how reluctant both district judges involved in this case are to have this case proceed in the normal course of litigation. Judge Real halted the case 'dead in its tracks' about a week after it was filed, against case precedent already established by the Ninth Circuit. Judge Davies twice urged plaintiff to take the matter to the Ninth Circuit on appeal-- he didn't want to deal with it. ¶Now that the case is on appeal, the conflict of interest is not diminished in the Ninth Circuit. Despite the fact that Ninth Circuit precedent reversed Judge Real more than once for the same type of conduct as has occurred in this case, the fact that fellow colleagues of those who would decide this appeal are named as defendants will undoubtedly separate this case from those already established by published decisions. Plaintiff has a cause of action which the federal court to date has refused to recognize or process as a case. Judicial ethics and fairness dictate that this case be referred to another appellate jurisdiction." [AB 1:2-16; APP A-14, -15].

Plaintiff's questioning the impartiality of the Court of Appeals was thus a matter of record at the inception of the appeal. Hence, §455(a) **immediately** came into play which requires ***mandatory disqualification of a judge*** "in any proceeding in which his impartiality *might reasonably be questioned...*". *United States v. Brown* (5th Cir.1976) 539 F.2d 467, 469 (emph. in orig.). "The provisions are mandatory; .... They impose no duty on the parties to seek disqualification...." *SCA Services Inc. v. Morgan* (7th Cir.1977) 557 F.2d 110, 117. Being mandatory, the provision is jurisdictional. The duty is placed on the judge or judges, in this case on the Ninth Circuit C/A, ***to recuse itself*** whenever a person reasonably questions impartiality. "[T]he... judge is required to recuse himself only when a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned. (citations)." *United States v. Winston* (9th Cir.1980) 613 F.2d 221, 222.

The fact of the questioning of impartiality is established on the record. Therefore, the immediate jurisdiction of the C/A ***before participating in the appeal*** turns to the issue of determining the reasonableness of the questioning. The question of reasonableness being factual, the facts presented by the inquiry must be addressed. "Subsection (a) [of §455] was described as establishing an objective standard which **required disqualification** 'if there is a ***reasonable factual basis*** for doubting the judge's impartiality.' H.Rep. No. 1453, 93d Cong. 2d Sess., U.S. Code Cong. & Admin. News 6351, 6355." *United States v. Conforte* (9th Cir. 1980) 624 F.2d 869, 880-81. (emph.added). Plaintiff therefore had a reasonable expectation of due process of law under the Fifth Amendment that the C/A would properly exercise the jurisdiction conferred by mandatory federal statute and **would determine** the factual basis of his questioning of its impartiality ***before acting upon the appeal.*** Plaintiff expected the first action taken by the Court of Appeals to be that determination of facts regarding its possible disqualification.

Instead, the first action taken by the C/A was to invite the U.S. Attorney into this case ***for the first time on record*** to participate at the appellate stage as counsel for defendants who made ***no appearance in district court!*** The first communication received was a phone message on 11/10/94 from Donna Everett of the U.S. Attorney's Office informing plaintiff of its intention to file a brief in this appeal, to which plaintiff filed his written Objection to such appearance [APP A-7], stating ten reasons by declaration: "(1) That the district court docket shows that defendants have failed to answer or otherwise defend, or make any appearance whatsoever in this litigation; (2) That I state in my opening brief, now before this court, on page 10 that proofs of service on each of the four defendants were filed May 12, 1994 [CR 10,11,12,14], and that... defendants were to have responded by May 25, 1994. That I emphasized 'No answers or other responses were ever filed.' (3) That I then state that I applied for entry of default against all defendants ... and that the district judge intervened in the entry process, ordering that the papers be rejected and returned, blocking entry of default. [Brief 11:4-6]; (4) That this default matter is currently one of five issues on appeal.... (5) That I argue the default issue on pages 30, 31, and 32 of the opening brief and also incorporate that portion of the brief into this Declaration.... (6) That accordingly it is my understanding and belief that the defendants have no standing to appear and argue the matters now on appeal, nor does the U.S. Attorney's Office have standing to do so on their behalf; (7) That I am informed and believe and thereon declare that despite the fact that there has been no entry of default on the record..., defendants have not made an appearance and are nevertheless in default as shown by the record and by my opening brief on file herein; (8) That I am deeply concerned about the serious conflict of interest in this case that has resulted in such unorthodox and outrageous conduct by the district judge.... (9) That I do not know how or why the U.S. Attorney's Office is just now becoming involved in this case; that at no time did I notify that office of this appeal, and that therefore I can only conclude that the court [C/A] contacted them unilaterally; (10) That I continue to be concerned about unorthodox and unauthorized interference in this case, now appearing to be conducted by the court [C/A] and whomever was apparently contacted...." The closing paragraph states "That I have made the formal request at the beginning of my opening brief that the Ninth Circuit Court of Appeals recuse itself from handling this appeal, and I reiterate that request at this time to also apply to the consideration of this Declaration." [APP A-8,-9,-10]. Thus, in addition to the factual basis stated in the opening brief questioning impartiality are the facts stated in the declaration quoted above.

The next communication received is a letter dated 11/10/94 from the U.S. Attorney's Office stating "The 9th Circuit Court of Appeals granted a phone extension to file the respondents brief in the above matter. The Appellees' brief is due November 28, 1994, and the optional reply is due 14 days after service of the Appellees' brief." [APP A-11].

With evidence of active conduct by the Ninth Circuit adversely affecting the appeal, while ignoring the question of impartiality already on record, plaintiff filed a formal motion for recusal of the Ninth Circuit pursuant to §455(a), citing points and authorities and stating facts by declaration supporting the motion. [APP A-12]. After repeating the facts stated in the opening brief questioning impartiality, plaintiff stated "That it was my intention at the time I was preparing my opening brief, that Title 28 U.S.C. §455(a) come into play ***before any action*** on the part of the Ninth Circuit took place in this appeal without the necessity of my filing a motion for recusal." [APP A-20 (emph. in orig.)]. "That I have been prompted to file this motion for recusal since some administrative matters have taken place that, according to the facts of this case, are inappropriate and will invite further abuse of the judicial process in this appeal." [APP A-21]. The final paragraph: "That it is my opinion and belief that the Ninth Circuit Court should have rejected the request for extension of time to file any kind of responsive brief under the circumstances of this case. That I now foresee further abuse of the judicial process by the court and by the U.S. Attorney's Office; that I am aware that the U.S. Attorney's Office is legal counsel for all federal judges, including for the Ninth Circuit Court of Appeals; that accordingly, I foresee the U.S. Attorney's Office taking advantage of their status to enter this case at this time in violation of due process of law, leading to an unfair decision-making process in this appeal; that I foresee the U.S. Attorney's Office providing the 'script' for their clients, the Ninth Circuit Court, to follow in deciding this appeal; that I foresee the Ninth Circuit Court being placed in a position of following orders from 'their legal counsel' in deciding this appeal." [APP A-22, -23]. Those facts are added to the factual basis for questioning impartiality of the C/A.

The first direct order by the C/A, which is the order in respect of which the writ is sought herein [APP A-2], occurred 12/9/94. That order not only failed to make a determination of the factual basis on which plaintiff questioned the court's impartiality as it is mandated to do under the statute, but by an act of cunning deceit to dodge making any determination of the factual basis regarding the improper appearance of the U.S. Attorney as an additional part of that questioning of impartiality, the court fraudulently sidesteps those facts and falsely treats them as a ***motion for default judgment*** and on that basis, ***denied a motion that never existed!*** "Before: D.W. NELSON, HALL and TROTT, Circuit Judges. ¶The 'Declaration of Appellant Ronald Branson in Objection to Appearance by Appellees' is construed as a motion for default judgment. So construed, the motion is denied. ¶Appellant's motion to recuse the entire Ninth Circuit Court of Appeals from hearing this appeal is denied. ¶The briefing schedule established on November 10, 1994 shall remain in effect." [APP A-2]. After taking an oath of office to "faithfully and impartially discharge and perform all the duties incumbent upon" those judges, this is the way their duties are carried out in practice. Rather than be accountable under law, judges usurp the law by calling it something else; then deny that "something else." Law is meaningless when courts are free to dodge and disregard it. Usurping law doesn't change law; it ***abuses*** the law.

Courts are often referred to as "courts of justice." What part does **impartiality** play? "The truth pronounced by Justinian more than a thousand years ago that, 'Impartiality is the ***life of justice,***' is just as valid today as it was then." *United States v. Brown, supra,* 539 F.2d at 469. (emph. added). Without impartiality, there is ***no justice!*** Dodging and ignoring the facts presented in questioning impartiality itself shows the lack of impartiality. This Court has long held that "justice must satisfy the ***appearance of justice.***" *Offutt v. United States* (1954) 348 U.S. 11, 14 (emph.added). Has justice been served by the Order of December 9th? [APP A-2].

"A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual [partiality] in the trial of cases. But our system of law has always endeavored to prevent ***even the probability*** of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered." *In Re Murchison* (1955) 349 U.S. 133, 136. (emph. added). The C/A evaded any consideration of circumstances and relationships in this appeal. Even the probability of unfairness was not prevented here. But the courts couldn't care less!

The December 9th Order is the crux of the issue now before the court. The issues on appeal are not reached. Key to this petition is Point #4 raised in the Exception to the December 9th Order and Motion for Rehearing of the recusal motion. [APP A-43,-44,-45]. It is again presented here, in substance, as follows:

The C/A failed to carry out the intent of Congress under 28 U.S.C. §455(a). Plaintiff cited *Liljeberg v. Health Services Acquisition Corp.* (1988) 486 U.S. 847, 865, in which this Court has set forth its interpretation of that intent, stating "The very purpose of §455(a) is to promote confidence in the judiciary by avoiding ***even the appearance of impropriety*** whenever possible. [citation]. Thus, it is critically important in a case of this kind to identify the facts that might reasonably cause an objective observer to question... impartiality." (emph. added). This function, deemed "critically important" by this Court, was not performed by the C/A, and in fact was intentionally avoided by the tactical maneuver of converting, by judicial fiat, plaintiff's facts concerning his questioning of impartiality into a fictitious "motion for default judgment" --then denying the bogus motion which never existed. Plaintiff never intended such a motion, nor could such a motion be brought under the facts of this case. Plaintiff contends that the Ninth Circuit C/A is incapable of "identify[ing] the facts" as an "objective observer" since the C/A is **not** an objective observer in the first place.

Unfortunately, there is no provision mandating that motions under §455(a) be decided by a disinterested tribunal. "Section 455... sets forth no procedural requirements. That section is directed to the judge, rather than the parties, and is self-enforcing on the part of the judge." *State of Idaho v. Freeman* (D.Idaho 1981) 507 F. Supp. 706, 726. Self-enforcement presumes honesty, integrity, and candor of judges whose impartiality is being questioned. Here, there is no real distinction between "the judge(s)" and "the parties" (defendants). "Moreover, section 455 includes no provision for referral of the question of recusal to another judge; if the judge sitting on a case is aware of grounds for recusal under section 455, ***that judge has a duty to recuse himself or herself.*** " (emph. added). *Id.* Those grounds are based on "the appearance of impropriety" as established in *Liljeberg* and any awareness thereof must be admitted by the judge under question-- again, presuming honesty, integrity, and candor. Here, the C/A refuses to acknowledge "aware[ness] of grounds for recusal under section 455" despite the fact that it was brought to the court's attention first in the opening brief, then by formal motion. There is an automatic built-in conflict of interest in having a judicial officer admit to any "awareness" of an appearance of impropriety on his part. Here, there is no excuse for the C/A not being "aware." Nevertheless, while the record discloses facts being brought before the court questioning impartiality, the judge can either flat-out ignore the facts altogether with impunity (just close his eyes) or convert those facts into another purpose dreamed up by the judge to suit the judge's own self-interests, e.g., avoiding the duty to recuse himself or even discuss partiality. The record shows that ***both tactics*** occurred here.

Plaintiff stated in his Motion for Recusal that he had no reason to believe that the Ninth Circuit judges would not be in the same state of denial as the district judges. Based on what happened in district court, plaintiff doubts that camaraderie would not overcome attention to the facts and law applicable thereto in order to act with impartiality in deciding this appeal.

Plaintiff has found from past experience that members of the judiciary jealously guard each other, to the point of departing from established procedure and disregarding facts appearing on the face of the record. The December 9th Order proves those suspicions.

The law, as it now stands, requires that the C/A at a minimum ***must*** "identify the facts that might reasonably cause an objective observer to question impartiality" whether or not it can or will be done fairly --it must be done. This Court has established in *Liljeberg* the standard under §455(a) as "avoiding even the appearance of impropriety." The procedure under the "appearance of partiality" approach is described as follows: "...[T]he motion would call certain facts to the judge's attention. He would then be called upon to evaluate all the relevant facts relating to the question of an appearance of partiality. In so doing, a judge is under the obligation to go beyond the actual facts alleged and determine whether a reasonable, disinterested observer knowing all the facts would question the judge's appearance of impartiality." *State of Idaho v. Freeman, supra,* 507 F.Supp. at 727.

Clearly the C/A did not follow proper procedure in deciding the §455(a) motion. The court didn't "decide" the motion at all --it ***evaded*** the motion! **"Denied"** does not dispose of the motion: **"denied"** does not "identify the facts that might reasonably cause an objective observer to question impartiality"; **"denied"** does not "evaluate all the relevant facts relating to the question of an appearance of partiality." The fact is that the C/A refused to exercise its mandatory jurisdiction under §455(a) altogether; the motion still remains pending and undetermined under the law.

The facts regarding the motion are summarized as follows:

(1) The first exception is to the court's having arbitrarily and capriciously "constru[ed]" the "Declaration of Appellant Ronald Branson in Objection to Appearance by Appellees" as a "motion for default judgment" in the Order of December 9, 1994, without citing any authority or basis for doing so. (2)

The second exception is to the court's evasion of the issue of standing of the so-called "appellees" to appear in this appeal, which evasion is shown to be an intentional tactical maneuver of avoidance by the court's unfounded conversion of appellant's declaration, initially bringing the issue of standing to the court's attention, into what the court chose to label "a motion for default judgment." (3) The third exception is the court's failure to address the conflict-of-interest issue to which the Motion for Recusal of the Ninth Circuit is specifically directed, to wit: (a) Three of the defendants are themselves Ninth Circuit judges; (b) The impropriety of the Ninth Circuit unilaterally contacting "the other side," to wit, the U.S. Attorney's Office, and inviting it into this appeal on behalf of the non-appearing defendants; (c) The judges of the Ninth Circuit sitting in judgment of this appeal share the same legal counsel (the U.S. Attorney) as do the defendants. (4) The fourth exception is the continuing failure and deliberate refusal of the C/A to carry out the "critically important" function described by the Supreme Court in *Liljeberg v. Health Services Acquisition Corp.* (1988) 486 U.S. 847, 865 as "identify[ing] the facts that might reasonably cause an objective observer to question ... impartiality" in properly deciding and disposing of the Motion for Recusal under Title 28 U.S.C. §455(a). [APP A-62, -63].

Plaintiff has repeatedly requested the C/A to do the following: (a) Determine the standing issue as a matter of law; (b) Address and resolve the conflict arising out of Ninth Circuit judges being defendants; (c) Address and resolve the conflict involving the impropriety of the Ninth Circuit court having unilaterally contacted the U.S. Attorney's Office in violation of the Code of Judicial Conduct, and inviting that Office to appear in this appeal; (d) Address and resolve the conflict involving the status of the U.S. Attorney's Office as legal counsel for the non-appearing defendants in this appeal, being the same legal counsel as that of the Ninth Circuit judges reviewing and deciding this appeal --the court and the defendants having the same legal counsel; (e) Discuss and evaluate under the standards set forth in Title 28 §455(a) all other conflicts of interest that exist, whether or not mentioned in the recusal motion; (f) Identify the facts that might reasonably cause an objective observer to question the impartiality of the Ninth Circuit Court of Appeal in this appeal, Case No. 94-55951, as the C/A absolutely must do under the standards established by the U.S. Supreme Court. [APP A-63, -64].

Besides violating federal statute, the Ninth Circuit judges involved in this case have violated Canon 1, Canon 2A, Canon 3A(1), Canon 3A(4), Canon 3A(5), Canon 3C(1) of the Code of Judicial Conduct. (Texts set forth in APP A-81,-82,-83). Particular attention should be given to those quoted portions at the end of the Appendix *infra*, as prophetically they seem to have been written with this particular case in mind! ***Take heed to what they establish.***

Petition is now made to this Court at the culmination of Round Two, after eight years of seeking a remedy in the federal judicial system, for appropriate relief under 28 U.S.C. §1651(a). "The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so. *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26 (1943). See also *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 661 (1978); *Kerr v. United States District Court for Northern District of California*, 426 U.S. 394, 402 (1976); *Will v. United States*, 389 U.S. 90, 95 (1967)." *Mallard v. United States District Court* (1989) 490 U.S. 296, 308.

This case qualifies under the "exceptional circumstances amounting to judicial 'usurpation of power,' " as the factual summary demonstrates; therefore this Court should inquire whether the C/A was empowered to enter the order of

December 9th and its subsequent Memorandum of February 27th. "[T]he writ [of mandamus] 'has traditionally been used in the federal courts only "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." ' *Will v. United States*, (1967) 389 U.S. 90, 95, quoting *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26 (1943)." *Kerr v. United States District Court* (1976) 426 U.S. 394, 402. "And, while we have not limited the use of mandamus by an unduly narrow and technical understanding of what constitutes a matter of 'jurisdiction,' *Will v. United States, supra,* at 95, the fact still remains that 'only exceptional circumstances amounting to a judicial "usurpation of power" will justify the invocation of this extraordinary remedy.' *Ibid.*" *Kerr*, p.402.

"[W]hen a court has no judicial power to do what it purports to do --when its action is not mere error but usurpation of power-- the situation falls precisely within the allowable use of [§1651(a)]. We proceed, therefore, to inquire whether the [lower court] is empowered to enter the order under attack." *DeBeers Mines v. United States* (1945) 325 U.S. 212, 217.

Relief is not available from any other court. The exceptional circumstances here is the plain usurpation of power by the C/A in proceeding with this appeal without satisfying the requirements of Title 28 U.S.C. §455(a) as defined and interpreted by this Court in *Liljeberg, supra*, and other courts. There are numerous acts of impropriety carried out by the C/A which must be addressed and accounted for to maintain the integrity of the court. The C/A refuses to do so. Under USSC Rule 10.1(a) this Court will consider the matter "[w]hen a United States court of appeals has ... so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision."

The writ will be in aid of the Court's appellate jurisdiction. "The supreme court shall have original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party. In all other cases, the supreme court shall have appellate jurisdiction." *Marbury v. Madison, supra,* 5 U.S. at 67. (Article III, Sec. 2, Clause 2, U.S. Constitution.) "It is the essential criterion of appellate jurisdiction that it revises and corrects the proceedings in a cause already instituted, and does not create that case." *Marbury* p.68. "[T]he power to issue the writ under [§1651(a)] is not limited to cases where its issue is required in aid of a jurisdiction already obtained, but that 'where a case is within the appellate jurisdiction of the higher court, a writ of mandamus may issue in aid of the appellate jurisdiction which might otherwise be defeated by the unauthorized action of the court below.' " (quoting *McCllellan v. Carland* (1910) 217 U.S. 268, 280.) *Ex parte United States* (1932) 287 U.S. 241, 246. "That power [under §1651(a)] protects the appellate jurisdiction which might be otherwise defeated and extends to support an ultimate power of review, though it not be immediately and directly involved. *McClellan v. Carland,* 217 U.S. 268; *Ex parte United States,* 287 U.S. 241, 246." *United States v. District Court* (1948) 334 U.S. 258, 263.

CONCLUSION

In honesty, this Court **cannot deny** what is said here. Based on the facts and circumstances shown, petitioner again "petition[s] for redress in the most humble terms" that this Court take action to break the deadlock developed now in Round Two of his eight-year entreatment for judicial remedy, to stave off the necessity for Round Three. Petitioner urges that this Court not decline to take action, as it did in Round One which has caused the further unbridled rampage of usurpation of power by the renegade courts in Round Two. To maintain public confidence in the judicial system, a remedy **must** be afforded; the courts **must** be compelled to obey the law and follow lawful and fair procedures. "...it is ***procedure*** that marks much of the difference between rule by law and rule by fiat." *Wisconsin v. Constantineau* (1971) 400 U.S.

433, 436. (emph.added). "[V]iolation of this Code [of Judicial Conduct] diminishes public confidence in the judiciary and thereby does injury to the system of government under law." [APP A-82]. "Washington-- Supreme Court Justice Stephen G. Breyer pledged Friday to enhance the public's trust in the nation's justice system 'for it is the very foundation of the rule of law'." *From Associated Press,* Los Angeles Times, August 13, 1994.

The track record here is dismal in this eight-year history of judicial corruption beyond belief. This Court has acquiesced in that corruption by refusing to exercise its obligation to correct this unending problem under its supervisory power as previously petitioned. If this Court of last resort continues to ignore the problem and refuses to intervene and clean up this insanity, the judicial system is lost. "The right to sue and defend in the courts is the alternative of force. In an organized society, it is the right conservative of all other rights, and lies at the foundation of orderly government." *Chambers v. Baltimore & Ohio R.* (1907) 207 U.S. 142, 148. If the judicial system doesn't work, there ceases to be a structured forum in which to settle grievances under law, and people are left to their own devices in a state of anarchy. That's the legacy for this country, thanks to the judicial system right now!

Courts are going to have to be held accountable for their actions; facts as presented must be accurately addressed and findings made; court documents must be considered as what they actually are and clearly intended to be-- not as something else into which they are converted by judicial fiat to avoid the issues. Courts must be made to expand their vocabulary beyond the word "denied."

Society has become restless due to arbitrary government out of control. "The touchstone of due process is protection of the individual against ***arbitrary action of government.***" [emph.added] *Dent v. West Virginia* (1889) 129 U.S. 114, 123 (citing *Wolff v. McDonnell* (1974) 418 U.S. 539, 558). Clearly, corrective measures **begin and end with the courts!**

May justice finally, after eight years of cunning craft and corruption, be brought to bear in this case and restore some scintilla of confidence in the judicial system. It is now up to this Court to implement "damage control" --seeing to it that even "the appearance of justice" will be satisfied by "avoiding even the appearance of impropriety." [pp 21-22 *ante*]. There's a lot of rebuilding and restoration that must be done!

Dated: May 23, 1995

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ORDER IN RESPECT OF WHICH THE WRIT IS SOUGHT
(USSC Rule 20.3(a))

FILED
DEC 9 1994
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RONALD BRANSON, Plaintiff-Appellant,	No. 94-55951 DC# CV 94-1932-MLR Central California
vs.	
BETTY B. FLETCHER, et al., Defendants-Appellees.	ORDER

Before: D.W. NELSON, HALL and TROTT, Circuit Judges

The "Declaration of Appellant Ronald Branson in Objection to Appearance by Appellees" is construed as a motion for default judgment. So construed, the motion is denied.

Appellant's motion to recuse the entire Ninth Circuit Court of Appeals from hearing this appeal is denied.

The briefing schedule established on November 10, 1994 shall remain in effect.

mocal/12.6.94/amr/6

MEMORANDUM DECISION

FILED
FEB 27 1995
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RONALD BRANSON,
Plaintiff-Appellant
v.
BETTY B. FLETCHER, personal capacity; DIARMUID F. O'SCANNLAIN, personal capacity; ANDREW J. KLEINFELD, personal capacity; WILLIAM D. KELLER, personal capacity,
Defendants-Appellees.

No. 94-55951
D.C. No. CV-94-01932-R

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding
Submitted February 21, 1995**

Before: SCHROEDER, CANBY and LEAVY, Circuit Judges

Ronald Branson appeals pro se the district court's dismissal of his Bivens action against a district judge and three judges of this court. We have jurisdiction pursuant to 28 U.S.C. §1291, and we affirm. [1]

---

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir.R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed.R.App.P. 34(a); 9th Cir.R.34-4. Accordingly, Branson's request for oral argument is denied.

[1] Branson's renewed motion for recusal of the entire Ninth Circuit and objection to this court's January 19, 1995 order are denied.

We agree with the district court that Branson's claims are barred by the doctrine of judicial immunity. See Mullis v. United States Bankruptcy Court, District of Nevada, 828 F.2d 1385, 1394 (9th Cir. 1987), cert. denied, 486 U.S. 1040 (1988). The district court properly denied Branson's motion for recusal because Judge Real's prompt sua sponte dismissal of Branson's complaint does not demonstrate bias or prejudice. See 28 U.S.C. §455; United States v. Payne, 944 F.2d 1458, 1476 (9th Cir. 1991), cert. denied, 112 S.Ct. 1598 (1992). Finally, the district court correctly held that Branson was not entitled to a default judgment. See Aldabe v. Aldabe, 616 F.2d 1089, 1092-93 (9th Cir. 1980).

AFFIRMED.

ORDER OF APRIL 13, 1995

FILED
APR 13 1995
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RONALD BRANSON
Plaintiff-Appellant,
v.
BETTY B. FLETCHER, personal capacity; DIARMUID F. O'SCANNLAIN, personal capacity; ANDREW J. KLEINFELD, personal capacity; WILLIAM D. KELLER, personal capacity,
Defendants-Appellees.

No. 94-55951
D.C. No. CV-94-01932-R
Central California
(Los Angeles)

ORDER

Before: SCHROEDER, CANBY, and LEAVY, Circuit Judges.

The "Exception to Memorandum Filed February 27, 1995," which we construe as a petition for rehearing, is denied.

ORDER OF JANUARY 19, 1995

FILED
JAN 19 1995
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RONALD BRANSON,
Plaintiff-Appellant,
v.
BETTY B. FLETCHER,
et al.,
Defendants-Appellees.

No. 94-55951
D.C.# CV-94-1932-MLR
Central California

ORDER

Before: D.W. NELSON, HALL and TROTT, Circuit Judges

Appellant's motion for reconsideration of this court's December 9, 1994 order is denied.

No further motions for reconsideration, rehearing, clarification of this court's December 9, 1994 order shall be filed or entertained in this docket.

miscmemos/jan95/94.55951/amr

United States Court Of Appeals
For The Ninth Circuit

Case No. 94-55951

RONALD BRANSON

Plaintiff and Appellant

vs.

BETTY B. FLETCHER, personal capacity; DIARMUID F. O'SCANNLAIN, personal capacity; ANDREW J. KLEINFELD, personal capacity; WILLIAM D. KELLER, personal capacity,

Defendants and Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
Honorable MANUEL L. REAL, District Judge
No. CV 94-1932-R

DECLARATION OF APPELLANT RONALD BRANSON IN OBJECTION TO APPEARANCE BY APPELLEES

RONALD BRANSON
Plaintiff/Appellant
10853 White Oak Avenue
Granada Hills, CA 91344
(818) 446-8356

DECLARATION OF APPELLANT RONALD BRANSON IN OBJECTION TO ANY APPEARANCE BY APPELLEES IN THIS APPEAL

(CERTIFIED MAIL RRR NO. P-498-824-894)

TO THE UNITED STATES COURT OF APPEALS:

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, RONALD BRANSON, declare and say:

That I am the plaintiff and appellant in USCA Case No. 94-55951 entitled RONALD BRANSON versus BETTY B. FLETCHER, personal capacity, et al.

That the facts herein stated are personally known to me to be true and that I could competently testify thereto as a witness if called upon to do so. That any matters herein stated of a conclusory nature are based on my opinion, information, and belief, and as to those matters, I believe them to be true.

That on October 12, 1994, I mailed by first-class mail to the United States Court of Appeals for the Ninth Circuit in San Francisco, California, my opening brief on appeal in the above-mentioned case.

That I have since been informed, and therefore believe, that on Thursday afternoon, November 10, 1994, at approximately 2:22 p.m., someone stating that she was from the U.S. Attorney's Office, whom I have never heard of nor have had any contact with throughout the course of this litigation, called to inform me that an extension of time to file a brief with the Ninth Circuit is being requested.

That as a proximate cause and result of that phone call, I am making this formal Declaration for the record to inform the appellate court that I unequivocally object to any appearance being made by defendants and appellees or anyone on their behalf in this appeal for the following reasons:

------------------------------------I------------------------------------

(1) That the district court docket shows that defendants have failed to answer or otherwise defend, or make any appearance whatsoever in this litigation.

(2) That I state in my opening brief, now before this court, on page 10 that proofs of service on each of the four defendants were filed May 12, 1994 [CR 10,11,12,14], and that according to the manner of service made, the defendants were to have responded by

May 25, 1994. That I emphasized "No answers or other responses were ever filed."

(3) That I then state that I applied for entry of default against all defendants on May 31, 1994 [Brief 10:10-11] and that the district judge intervened in the entry process, ordering that the papers be rejected and returned, blocking the entry of default. [Brief 11:4-6].

(4) That this default matter is currently one of five issues on appeal before this court. [Brief p.2]. That presented in detail on pages 18, 19, and 20 of my opening brief are the relevant facts regarding the default issue which I incorporate herein as part of this Declaration.

(5) That I argue the default issue on pages 30, 31, and 32 of the opening brief and also incorporate that portion of the brief into this Declaration. That any matters therein presented that are not strictly construed as "facts" personally known to me, I hereby declare that I believe those matters to be true and correct based on my information and belief from the evidence shown by the record.

(6) That accordingly it is my understanding and belief that the defendants have no standing to appear and argue the matters now on appeal, nor does the U.S. Attorney's Office have standing to do so on their behalf.

(7) That I am informed and believe and thereon declare that despite the fact that there has been no entry of default on the record in this case, defendants have not made an appearance and are nevertheless in default as shown by the record and by my opening brief on file herein.

(8) That I am deeply concerned about the serious conflict of interest in this case that has resulted in such unorthodox and outrageous conduct by the district judge as I describe and show by evidence in my opening brief.

(9) That I do not know how or why the U.S. Attorney's Office is just now becoming involved in this case; that at no time did I notify that office of this appeal, and that therefore I can only conclude that the court contacted them unilaterally.

(10) That I continue to be concerned about unorthodox and unauthorized interference in this case, now appearing to be

conducted by the court and whomever was apparently contacted.

That I have made the formal request at the beginning of my opening brief that the Ninth Circuit Court of Appeals recuse itself from handling this appeal, and I reiterate that request at this time to also apply to the consideration of this Declaration.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 12 day of November, 1994, at Los Angeles California.

/s/_________________________
RONALD BRANSON, Appellant

LETTER FROM U.S. ATTORNEY 11/10/94

[Dept. Seal]

U.S. Department of Justice
United States Attorney
Central District of California

DJE:ft
(213) 894-6684

Room 7516 Federal Building
300 North Los Angeles Street
Los Angeles, California 90012

November 10, 1994

Ronald Branson
10853 White Oak Avenue
Granada Hills, CA 91344

Re: Ronald Branson v. Betty B. Fletcher, et al.,
C.A. No. 94-55951 D.C. No. CV 94-1932-R

Dear Mr. Branson:

The 9th Circuit Court of Appeals granted a phone extension to file the respondents brief in the above matter. The Appellees' brief is due November 28, 1994, and the optional reply is due 14 days after service of the Appelles' brief.

Thank you for your courtesy in this matter.

Very truly yours,
NORA M. MANELLA
United States Attorney
/s/
DONNA J. EVERETT
Assistant United States Attorney

MOTION FOR RECUSAL OF NINTH CIRCUIT
(Minus Exhibit)

United States Court Of Appeals
For The Ninth Circuit

Case No. 94-55951

RONALD BRANSON

Plaintiff and Appellant

vs.

BETTY B. FLETCHER, personal capacity; DIARMUID F. O'SCANNLAIN, personal capacity; ANDREW J. KLEINFELD, personal capacity; WILLIAM D. KELLER, personal capacity,

Defendants and Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
Honorable MANUEL L. REAL, District Judge
No. CV 94-1932-R

MOTION OF APPELLANT RONALD BRANSON FOR RECUSAL OF NINTH CIRCUIT

RONALD BRANSON
Plaintiff/Appellant
10853 White Oak Avenue
Granada Hills, CA 91344
(818) 446-8356

MOTION OF APPELLANT RONALD BRANSON FOR RECUSAL OF NINTH CIRCUIT

(CERTIFIED MAIL NO. P-498-824-898)

Appellant RONALD BRANSON hereby makes this motion pursuant to 28 U.S.C. §455(a) for an order of recusal of the Ninth Circuit Court of Appeals and reassignment to a disinterested circuit in USCA Case No. 94-55951 entitled RONALD BRANSON, Plaintiff and Appellant, versus BETTY B. FLETCHER, personal capacity; DIARMUID F. O'SCANNLAIN, personal capacity; ANDREW J. KLEINFELD, personal capacity; WILLIAM D. KELLER, personal capacity, on the ground that certain facts exist and have recently developed in this appeal to show the impartiality of any judge assigned and functioning in the United States Court of Appeals for the Ninth Circuit might reasonably be questioned.

This motion is based on the record of this case, on appellant's opening brief dated October 12, 1994, on appellant's declaration in objection to any proposed appearance by appellees and the Office of U.S. Attorney in this appeal dated November 12, 1994, on the memorandum of points and authorities, supporting declaration, and exhibit(s) attached hereto, and on any other papers, files and records that may be filed in this appeal having any affect on or application to this motion.

This motion is directed to the conflict of interest that exists with the Ninth Circuit. As a proximate cause and result of recent developments in this appeal, plaintiff mailed to this court a declaration dated November 12, 1994, describing plaintiff's heightened concerns as follows:

"That I am deeply concerned about the serious conflict of interest in this case that has resulted in such unorthodox and outrageous conduct by the district judge as I describe and show by evidence in my opening brief. That I do not know how or why the U.S. Attorney's Office is just now becoming involved in this case; that at no time did I notify that office of this appeal, and that therefore I can only conclude that the court contacted them unilaterally. That I continue to be concerned about unorthodox and unauthorized interference in this case, now appearing to be conducted by the court and whomever was apparently contacted. That I have made the formal request at the beginning of my opening brief that the Ninth Circuit Court of Appeals recuse itself

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from handling this appeal, and I reiterate that request at this time to also apply to the consideration of this Declaration." [Decl. 3:1-12].

As set forth in the attached declaration herein, there appears to be, and I thereon believe there to be, actual acts of impropriety initiated by the court in reaching out to the U.S. Attorney's Office in an attempt to draw in opposing counsel into this appeal in an effort to intervene in a default being taken against the defendants, who also happen to be their fellow brethren judges equal to them and sharing the same bench with them. As to the U.S. Attorney's Office contacted by the court, I also believe that all judges in the Ninth Circuit share the very same and identical attorney/client relation as do the defendants in this appeal. Counsel for the judges herein and for the defendants are one and the same.

The most recent development in this appeal, prompting the filing of this motion, is the receipt in the mail of a letter from "Donna J. Everett, Assistant United States Attorney" a copy of which is attached hereto as "EXHIBIT A" and made a part hereof, and which is self-explanatory.

Appellant's opening brief originally describes the conflict as follows:

"The defendants in this case involve three Ninth Circuit judges and a district court judge in Los Angeles. Although the defendants are being sued in their personal capacity as individuals, and not as judicial officers, they are still friends, acquaintances, colleagues, and members of the judicial profession. The record shows how reluctant both district judges involved in this case are to have this case proceed in the normal course of litigation. Judge Real halted the case 'dead in its tracks' about a week after it was filed, against case precedent already established by the Ninth Circuit. Judge Davies twice urged plaintiff to take the matter to the Ninth Circuit on appeal-- he didn't want to deal with it.

Now that this case is on appeal, the conflict of interest is not diminished in the Ninth Circuit. Despite the fact that Ninth Circuit precedent reversed Judge Real more than once for the same type of conduct as has occurred in this case, the fact that fellow colleagues of those who would decide this appeal are named as defendants will undoubtedly separate this case from those already established by published decisions. Plaintiff has a cause of action which the federal court

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to date has refused to recognize or process as a case. Judicial ethics and fairness dictate that this case be referred to another appellate jurisdiction." [Brief 1:2-16].

"Plaintiff is now forced to appeal. However, it is obvious from the record that there is a serious conflict of interest with the district court doing everything to thwart litigation of this case, since it involves their 'brethren.' This conflict of interest is even more pronounced with the Ninth Circuit since three of the four defendants are among 'their own' and despite the fact that Judge Real's similar conduct has been reversed at least twice before in previous cases, those cases didn't involve Ninth Circuit colleagues. Under the circumstances, to avoid any appearance of impropriety this case should be referred to another Circuit or certified directly to the U.S. Supreme Court." [Brief 12:8-15].

"The underlying problem in this case is the conflict of interest that exists between the judiciary and the defendants. The conflict is even greater with the Ninth Circuit Court, since three of the four defendants are its own people. While plaintiff is quite aware of the tendency for judges to cover up for judges, no matter where they are, until some other 'route' becomes available, this case must be presented to judges somewhere. Judge Davies said in both of his orders 'Take it to the Ninth Circuit' --Judge Real merely closed out everything without deciding anything, using the excuse 'Defendants are immune for judicial acts' knowing that judicial acts are not alleged. Some way, somehow, judges must be held accountable for their unlawful, unconstitutional, and treasonous acts. Plaintiff contends that the Ninth Circuit Court of Appeals is not qualified to fairly decide this appeal." [Brief 33:2-11].

This motion is not rested on bias or prejudice or prior judicial decisions of judges of the Ninth Circuit as a whole for purposes of sitting in judgment on this appeal.

The supporting memorandum of points and authorities and declaration follow.

Dated: November 16, 1994

/s/____________________________
RONALD BRANSON, Appellant

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MEMORANDUM OF POINTS AND AUTHORITIES

Title 28 U.S.C. §455(a) states "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Appellant applies this provision to the entire Ninth Circuit of the U.S. Court of Appeals regarding the handling of this appeal based on the facts stated in the supporting declaration which follows this memorandum. The case of *Hepperle v. Johnston* (5th Cir.1979) 590 F.2d 609 is an example of a case applying §455 to several appellate court judges.

"The very purpose of §455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible. [citation]. Thus, it is critically important in a case of this kind to identify the facts that might reasonably cause an objective observer to question... impartiality." *Liljeberg v. Health Services Acquisition Corp.* (1988) 486 U.S. 847, 865. "'The guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact.' *Public Utilities Com'n of D.C. v. Pollak*, 343 U.S. 451, 466-7 (1952) (Frankfurter, J. in chambers)." *Id.* pp 869-70.

"The 1975 Amendment to 28 U.S.C. §455 changed the standard for recusal from a subjective one... to the present objective standard requiring disqualification whenever the judge's impartiality 'might reasonably be questioned'. The change was intended to foster public confidence in the judicial system by requiring disqualification 'if there is a reasonable factual basis for doubting the judge's impartiality....' H.Rep.No. 1453, 93d Cong., 2d Sess., 1974 U.S. Code Cong. & Adm. News p.6355." *United States v. Cowden* (1st Cir.1976) 545 F.2d 257, 265.

"The proper test ... is whether the charge of lack of impartiality is grounded on facts that would create a reasonable doubt concerning the judge's impartiality, not in the mind of the judge himself or even necessarily in the mind of the litigant filing the motion under 28 U.S.C. §455, but rather in the mind of the reasonable man. [citations]." *Id.* p.265. Appellant points out here that the conflict of interest here will unfairly affect the judgment of the Ninth Circuit in deciding this motion. Appellant does not believe the Ninth Circuit can view the facts supporting this motion as a "reasonable" **and disinterested** man, as a member of the "general public." "[W]e cannot be influenced by our own faith in the integrity of a particular judge [or a circuit of judges]. Congress was concerned with the appearance of impartiality to the general public." *Rice v. McKenzie* (4th Cir.1978) 581 F.2d 1114, 1117.

"The standard set out in §455(a) is general and does not rest on the personal bias and prejudice stricture of §§144 and 455(b)(1)." *Parrish v. Bd. of Com'rs of Alabama State Bar* (5th Cir.1975) 524 F.2d 98, 103. "At issue in a §455 charge is the *appearance* of partiality." [emphasis in orig.] *S.J. Groves & Sons v. Int. Bro. of Teamsters* (7th Cir.1978) 581 F.2d 1241, 1248. An example of this appearance of partiality is applied in the case of brothers: "This appearance of partiality begins with the natural assumption that brothers enjoy a close personal and family relationship and, consequently, would be inclined to support each other's interests." *SCA Services Inc. v. Morgan* (7th Cir.1977) 557 F.2d 110, 116. Appellant contends that a similar relationship exists among members of the Ninth Circuit judiciary, and even more so in that they all share the same counsel, defendants included. They all would "support each other's interests" and the record now shows impropriety in this appeal as well as cover-up at the district court level. "[T]he judge's inquiry creates an impression of private consultation and appearance of partiality which does not reassure a public already skeptical of lawyers and the legal system." *Id.* p.116.

"The provisions [of §455] are mandatory; .... They impose no duty on the parties to seek disqualification nor do they contain any time limits within which disqualification must be sought." *SCA Services Inc. v. Morgan, (supra)* 557 F.2d at 117. "The use of '*might* reasonably be questioned' in section 455(a) [emph. in original] clearly mandates that it would be preferable for a judge to err on the side of caution and disqualify himself in a questionable case." *Potashnick v. Port City Const. Co.* (5th Cir.1980) 609 F.2d

1101, 1112. "The growing number of federal judges, and the availability of rapid transportation to move those judges from place to place when necessary, make the decision to disqualify much less burdensome on the judicial system than in times past; any inconvenience which does arise is more than outweighed by the need to protect the dignity and integrity of the judicial process." *Id.* p.1112.

The facts in this case which might cause an objective observer, i.e., a member of the general public, to reasonably question the impartiality of the Ninth Circuit Court of Appeals in handling this appeal are set forth by declaration of appellant which follows.

Dated: November 16, 1994

/s/________________________

RONALD BRANSON, Appellant

DECLARATION OF RONALD BRANSON IN SUPPORT OF MOTION FOR RECUSAL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, RONALD BRANSON, declare and say:

That I am the plaintiff and appellant in USCA Case No. 94-55951 entitled RONALD BRANSON versus BETTY B. FLETCHER, personal capacity, et al.

That the facts herein stated are personally known to me to be true and that I could competently testify thereto as a witness if called upon to do so. That any matters herein stated of a conclusory nature are based on my opinion, information, and belief, and as to those matters, I believe them to be true.

That on October 12, 1994, I mailed by first-class mail to the United States Court of Appeals for the Ninth Circuit in San Francisco, California, my opening brief in the above-mentioned case.

That the opening paragraph of my appellate brief states the following:

"REQUEST FOR RECUSAL OF NINTH CIRCUIT IN THIS APPEAL.

The defendants in this case involve three Ninth Circuit judges and a district court judge in Los Angeles. Although the defendants are being sued in their personal capacity as individuals, and not as judicial officers, they are still friends, acquaintances, colleagues, and members of the judicial profession. The record shows how reluctant both district judges involved in this case are to have this case proceed in the normal course of litigation. Judge real halted the case 'dead in its tracks' about a week after it was filed, against case precedent already established by the Ninth Circuit. Judge Davies twice urged plaintiff to take the matter to the Ninth Circuit on appeal-- he didn't want to deal with it.

"Now that the case is on appeal, the conflict of interest is not diminished in the Ninth Circuit. Despite the fact that Ninth Circuit precedent reversed Judge Real more than once for the same type of conduct as has occurred in this case, the fact that fellow colleagues of those who would decide this appeal are named as defendants will undoubtedly separate this case from those already established by published decisions. Plaintiff has a cause of action which the federal court

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to date has refused to recognize or process as a case. Judicial ethics and fairness dictate that this case be referred to another appellate jurisdiction." [Brief 1:1-16].

That I state in the final paragraph of the Statement of the Case the following:

"Plaintiff is now forced to appeal. However, it is obvious from the record that there is a very serious conflict of interest with the district court doing everything to thwart litigation of this case, since it involves their 'brethren.' This conflict of interest is even more pronounced with the Ninth Circuit since three of the four defendants are among 'their own' and despite the fact that Judge real's similar conduct had been reversed at least twice before in previous cases, those cases didn't involve Ninth Circuit colleagues. Under the circumstances, to avoid any appearance of impropriety this case should either be referred to another Circuit or certified directly to the U.S. Supreme Court." [Brief 12:8-15].

That I state in the first paragraph of the conclusion of my opening brief the following:

"The underlying problem in this case is the conflict of interest that exists between the judiciary and the defendants. The conflict is even greater with the Ninth Circuit Court, since three of the four defendants are its own people. While plaintiff is quite aware of the tendency for judges to cover up for judges, no matter where they are, until some other 'route' becomes available, this case must be presented to judges somewhere. Judge Davies said in both of his orders 'Take it to the Ninth Circuit' –Judge Real merely closed out everything without deciding anything, using the excuse 'Defendants are immune for judicial acts' knowing that judicial acts are not alleged. Some way, somehow, judges must be held accountable for their unlawful, unconstitutional, and treasonous acts. Plaintiff contends that the Ninth Circuit Court of Appeals is not qualified to fairly decide this appeal." [Brief 33:1-11].

That it was my intention at the time I was preparing my opening brief, that Title 28 U.S.C. §455(a) come into play ***before any action*** on the part of the Ninth Circuit took place in this appeal without the necessity of my filing a motion for recusal. That it is my judgment that the fact that Ninth Circuit judges are named as defendants in this case would **alone** be enough for the average person on the street to reasonably question the impartiality of the Ninth Circuit Court to fairly handle and decide this appeal. That in my opinion, it is ***prima facie evidence*** that the Ninth Circuit Court **cannot** fairly conduct this appeal. That it is common knowledge that a conflict of interest arises when defendants named in a lawsuit are part of the same entity that would sit in judgment of that same lawsuit. That the conflict of interest goes beyond the named individuals themselves, but extends throughout the entity as fellow colleagues within that entity.

That my concerns about this conflict of interest is especially piqued because of the outrageous and unorthodox manner in which this case has already been handled in district court, and which now must come before the same court by which three of the four named defendants are employed as judges. That it is my firm opinion and belief that such outrageous conduct took place by the district court judges in this case with the full confidence that the Ninth Circuit would be sympathetic and exonerate them on appeal. That I hold this opinion even in light of the fact that the Ninth Circuit Court has at least on two prior occasions admonished, reversed, and remanded cases in which the district judge assigned to my case dismissed those previous cases without following established procedural steps, exactly as he did in my case. That the great distinction is that, unlike the previous cases, my case names as defendants Ninth Circuit judges in their personal capacity as individuals which places the Ninth Circuit in an awkward position of having to rule against their own co-workers in order to uphold their own case precedent.

That it is my firm opinion and belief that such outrageous and outlandish conduct would not have taken place in district court to the extent that it did in my case, as I have described and shown by evidence in my opening brief, were it not for the fact that I named judges as defendants in their personal capacity for acts and omissions ***ultra vires*** delegated authority. That as I have shown by the record and set forth in my opening brief, the district judges are in a state of denial that the judges named as defendants could possibly act ***ultra vires*** delegated authority --as Judge Real put it "It just doesn't fly"-- nor that Judge Real could possibly have acted in a way that would call for his disqualification from the case. As Judge Davies repeatedly said "Take it to the Ninth Circuit if you aren't satisfied with Judge Real's order."

That I have no reason to believe that the Ninth Circuit would not be in the same state of denial as the district judges. Based on what has taken place in district court with this case, I am of the opinion that the reasonable man would doubt that camaraderie would not overcome attention to the facts of this case and the law applicable thereto in order to act with impartiality in deciding this appeal. That I have found from my experience that members of judiciary jealously guard each other to the point of departing from established procedure and disregarding facts appearing on the face of the record.

That I have been prompted to file this motion for recusal since some administrative matters have taken place that, according to the facts of this case, are inappropriate and will invite further abuse of the judicial process in this appeal. That on November 12, 1994, I mailed a declaration to this court describing my objection to recent developments as follows:

"That I have since been informed, and therefore believe, that on

Thursday afternoon, November 10, 1994, at approximately 2:22 p.m., someone stating that she was from the U.S. Attorney's Office, whom I have never heard of nor have had any contact with throughout the course of this litigation, called to inform me that an extension of time to file a brief with the Ninth Circuit is being requested." [Decl. 1:18-22].

That I listed ten reasons for my objection, citing my opening brief and the record to show that the defendants failed to answer or otherwise defend in this action; that they have not appeared whatsoever in this litigation; that I requested entry of default, but Judge Real blocked entry of default by his arbitrary action described in the brief; that the failure to enter default is one of the issues on appeal; that under the circumstances, defendants have no standing to appear and argue the matters on appeal, nor does the U.S. Attorney's Office have standing to do so on their behalf; that I am deeply concerned about the serious conflict of interest in this case that has resulted in such unorthodox and outrageous conduct by the district judge; that I do not know how or why the U.S. Attorney's Office is just now becoming involved in this case; that I never notified that office about this appeal and can only conclude that they were contacted unilaterally by the court.

That after mailing that declaration to the court on November 12th, I received in the mail a letter from "Donna J. Everett, Assistant United States Attorney" dated November 10, 1994, stating that the Ninth Circuit granted a phone extension to file "the respondents brief" in this case. A copy of said letter is attached hereto as "EXHIBIT A" and made a part hereof. That the record

shows that there are no "respondents" or appellees appearing of record; that they have defaulted and that matter is on appeal.

That it is my opinion and belief that the Ninth Circuit Court should have rejected the request for extension of time to file any kind of responsive brief under the circumstances of this case. That I now foresee further abuse of the judicial process by the court and by the U.S. Attorney's Office; that I am aware that the U.S. Attorney's Office is legal counsel for all federal judges, including for the Ninth Circuit Court of Appeals; that accordingly I foresee the U.S. Attorney's Office taking advantage of their status to enter this case at this time in violation of due process of law, leading to an unfair decision-making process in this appeal; that I foresee the U.S. Attorney's Office providing the "script" for their clients, the Ninth Circuit Court, to follow in deciding this appeal; that I foresee the Ninth Circuit Court being placed in a position of following orders from "their legal counsel" in deciding this appeal.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 16 day of November, 1994, at Los Angeles, California.

/s/______________________
RONALD BRANSON, Appellant

EXH "A" attached.

APPELLEES BRIEF (Cover Only)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RONALD BRANSON, Plaintiff-Appellant,	C.A. No. 94-55951
v.	D.C. No. CV 94-1932-R
BETTY B. FLETCHER, personal capacity; DIARMUID F. O'SCANNLAIN, personal capacity; ANDREW J. KLEINFELD, personal capacity; WILLIAM D. KELLER, personal capacity, Defendant-Appellee.	

APPELLEE'S BRIEF

Appeal From United States District Court
For The Central District of California
THE HONORABLE MANUEL L. REAL, PRESIDING JUDGE

NORA M. MANELLA
United States Attorney
LEON W. WEIDMAN
Assistant United States Attorney
Chief, Civil Division
DONNA J. EVERETT
Assistant United States Attorney
Room 7516, Federal Building
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-6684
Attorneys for Federal Defendants-Appellees

United States Court Of Appeals
For The Ninth Circuit

Case No. 94-55951

RONALD BRANSON

Plaintiff and Appellant

vs.

BETTY B. FLETCHER, personal capacity; DIARMUID F. O'SCANNLAIN, personal capacity; ANDREW J. KLEINFELD, personal capacity; WILLIAM D. KELLER, personal capacity,

Defendants and Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA
Honorable MANUEL L. REAL, District Judge
No. CV 94-1932-R

APPELLANT'S REPLY TO QUESTIONABLE APPEARANCE OF DEFAULTING DEFENDANTS/APPELLEES

RONALD BRANSON
Plaintiff/Appellant
10853 White Oak Avenue
Granada Hills, CA 91344
(818) 446-8356

APPELLANT'S REPLY TO QUESTIONABLE APPEARANCE OF DEFAULTING DEFENDANTS/APPELLEES

1. The challenge to the standing of appellees to appear is unopposed and unresolved.

There is pending before this court the *Motion of Appellant Ronald Branson For Recusal of Ninth Circuit* which was filed pursuant to FRAP Rules 25 and 27 on November 16, 1994. The statutory authority for said Motion is Title 28 U.S.C. Section 455(a) which states "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." [Motion 4:3-4]. Attached to the Motion is proof of service on Donna J. Everett, Assistant U.S. Attorney in Los Angeles, as an interested party to the Motion.

The pertinent portion of said Motion states in the supporting declaration: "That I listed ten reasons for my objection, citing my opening brief and the record to show that the defendants (appellees) failed to answer or otherwise defend in this action; that they have not appeared whatsoever in this litigation; that I requested entry of default, but Judge Real blocked entry of default by his arbitrary action described in the brief; that the failure to enter default is one of the issues on appeal; that under the circumstances, defendants (appellees) have no standing to appeal [*sic*, "appear"] and argue the matters on appeal, nor does the U.S. Attorney's Office have standing to do so on their behalf; ... that I do not know how or why the U.S. Attorney's Office is just now becoming involved in this case; that I never notified that office about this appeal and can only conclude that they were contacted unilaterally by the court." [Motion 10:14-23].

FRAP Rule 27(a) allows a response in opposition to any motion to be filed within seven (7) days after service of the motion, which in this case would have

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been by November 23, 1994. Appellant has received no opposition whatsoever to the Motion and accordingly, the facts stated therein are deemed admitted.

2. The purported "Appellees' Brief" is moot and void.

The record shows that the Court of Appeals has no personam jurisdiction over the appellees in default and out of court as they have made no appearance since the inception of this case. The Motion pending before the appellate court is unopposed and still undecided. Accordingly, the purported "Appellees' Brief" is moot and void as a matter of law and cannot be recognized. However, appellant reserves the right to address the arguments made in the purported "Appellees' Brief" if and when appellees' standing to appear is determined by a disinterested court to be valid as a matter of law.

Dated: December 6, 1994

/s/____________________
RONALD BRANSON,
Plaintiff and Appellant

AFFIDAVIT OF RONALD BRANSON TO U.S. ATTORNEY GENERAL JANET RENO RE CRIMINAL CONDUCT OF DISTRICT JUDGE MANUEL L. REAL AND DISTRICT JUDGE JOHN G. DAVIES AND ENDORSEMENT THEREOF BY U.S. ATTORNEY NORA M. MANELLA (LOS ANGELES) AND ASSISTANT U.S. ATTORNEY DONNA J. EVERETT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

RONALD BRANSON, being duly sworn, deposes and says:

1. That the following is the Truth, the Whole Truth, and nothing but the Truth, as sworn by oath.

2. That the facts herein stated are personally known to your affiant, the undersigned, and that he will competently testify thereto if called upon as a witness to do so.

3. That other matters herein stated of a conclusory nature are based on the information and belief of your affiant, and as to those matters, he believes them to be true.

4. That at all times herein mentioned, your affiant is and has been an inhabitant of the State of California.

5. **That this Affidavit is directed to the United States Attorney General due to the fact that the United States Attorney (Nora M. Manella) to whom the original application was made for criminal prosecution of the conduct therein described is now relying upon the same criminal act complained of by your affiant as hereinafter set forth.**

6. **That the conflict of interest of U.S. Attorney Manella is manifest by being both the prosecutor and defender of the same criminal conduct.**

7. That your affiant filed case No. CV 94-1932-R in District Court (Los Angeles) on March 28, 1994, after paying in full the required court fees in the amount of One Hundred Twenty ($120.00) Dollars, as evidenced by Receipt No. 120926 of said date.

8. That by filing said complaint and paying in full, as consideration, the required amount to the District Court, and by the

acceptance of the complaint and required fees by said Court on March 28, 1994, your affiant entered into a contract with said Court at that time.

9. That in return for the consideration paid, your affiant became entitled to receive the benefits of the adversary proceedings contemplated by the Federal Rules, including but not limited to: (1) process issued and served; (2) notice of any motion thereafter made by defendant or the court to dismiss the complaint and the grounds therefor; (3) an opportunity to submit a written memorandum in opposition to such motion; (4) in the event of dismissal [after notice and opportunity], a statement of the grounds therefor; and (5) an opportunity to amend the complaint to overcome the deficiency unless it clearly appears from the complaint that the deficiency cannot be overcome by amendment. (See *Armstrong v. Rushing* (9th Cir.1965) 352 F.2d 836; *Potter v. McCall* (9th Cir.1970) 433 F.2d 1087).

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10. That the case was assigned to JUDGE MANUEL L. REAL, Courtroom 8 of the U.S. Courthouse, 312 North Spring Street, Los Angeles, California.

11. That on April 6, 1994, seven court days after the filing of the complaint and before service of process on any defendant was made, MANUEL L. REAL, acting under color and pretense of law, signed and filed an order dismissing the complaint, a copy of which is attached hereto as "EXHIBIT I" and made a part hereof.

12. That said order was filed and entered without notice to your affiant of the intention to dismiss the complaint, and without an opportunity for your affiant to file a written opposition thereto, and without an opportunity for hearing prior to dismissal.

13. That as a proximate cause and result of said action by MANUEL L. REAL, your affiant was deprived of his right to due process of law secured and protected by the Fifth Amendment to the United States Constitution.

14. **That MANUEL L. REAL has, on at least two prior occasions, been reversed (evidenced by published opinions of the Ninth Circuit Court of Appeals) for the very same acts and omissions as aforesaid, in both instances the matter having been remanded and the appellate court admonishing REAL for his**

violation of procedure.

15. That one such case is *Clinton v. Los Angeles County, et al.* (9th Cir.1970) 434 F.2d 1038, a copy of which is attached hereto as "EXHIBIT II" and made a part hereof.

16. That another such case is *California Diversified Promotions, Inc. v. Musick* (9th Cir.1974) 505 F.2d 278, 281, 284, a copy of which is attached hereto as "EXHIBIT III" and made a part hereof.

17. That in dismissing the complaint in this action, **MANUEL L. REAL acted in open defiance and reckless disregard of constitutional requirements made specific and definite to him by the Ninth Circuit Court of Appeals**, satisfying the criminal "willfulness" and "specific intent" requirement under Title 18 U.S.C. §242 recently established by the Ninth Circuit in *U.S. v. Reese* (9th Cir.1993) 2 F.3d 870, 880-881.

18. That in dismissing the complaint as aforesaid, MANUEL L. REAL also willfully deprived your affiant of his right to trial by jury, which is plain from the wrongful conduct that in fact contravenes a right definitely established in law, evidencing a reckless disregard for that right which is the legal equivalent of willfulness under §242. (See *U.S. v. Reese (supra)* at page 881).

19. That in addition to the violations of due process of law, as aforesaid, the willful and malicious acts and omissions of MANUEL L. REAL have obstructed justice, deprived your affiant of the right to petition for redress of grievance, to gain access to the federal adjudicatory process, and to obtain a federal remedy, rights that are secured and protected under the Constitution and laws of the United States.

20. That on May 2, 1994, your affiant applied to the U.S. Attorney in Los Angeles (Nora M. Manella) for criminal prosecution of MANUEL L. REAL, a copy of which request is attached hereto as "EXHIBIT IV" and made a part hereof.

21. **That since the application of May 2nd, further criminal actions have taken place escalating the crime to warranting felony criminal prosecution.**

22. That on Friday, May 6, 1994, your affiant received in the mail notice of the referral of his motion to disqualify JUDGE MANUEL L. REAL, filed on April 28, 1994, to JUDGE JOHN G.

DAVIES for determination.

23. That on Monday, May 9, 1994, the next available court day, your affiant filed a supplemental declaration in support of his motion to disqualify JUDGE MANUEL L. REAL,

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attaching a copy of the May 2nd application for criminal prosecution of REAL shown in EXHIBIT IV hereof, and serving a copy thereof by mail on both JUDGE MANUEL L. REAL and JUDGE JOHN G. DAVIES shown by proof.

24. That by so mailing, both MANUEL L. REAL and JOHN G. DAVIES were made aware of the facts surrounding the application for criminal prosecution based on the willful violation of rights made definite and specific to MANUEL L. REAL by previous court decisions and the deprivation of the rights of your affiant to procedural due process as specifically defined by the Ninth Circuit Court of Appeals in published opinions cited.

25. That on May 6, 1994, before receiving the copy of the May 2nd application for criminal prosecution filed May 9th, JOHN G. DAVIES denied the motion to disqualify JUDGE MANUEL L. REAL, a copy of which denial is attached hereto as "EXHIBIT V" and made a part hereof.

26. As shown by EXHIBIT V, JUDGE JOHN G. DAVIES stated "The only evidence in support of this assertion [of bias and prejudice] is Judge Real's prompt sua sponte dismissal of his action" without discussing the fact that your affiant had not been given any notice of, or opportunity to respond to, Judge Real's intention to dismiss, which violated your affiant's right to due process of law, as was stated in the Affidavit of Prejudice attached to the Motion to Disqualify.

27. That by failing to discuss the due process violation that was presented in the motion to disqualify, and of which JOHN G. DAVIES knew or was reasonably expected to have known from the reasons stated by your affiant in the Affidavit of Prejudice of said motion, DAVIES acquiesced by silence in such wrongdoing and has thereby condoned such conduct and has become a participant in it.

28. That on May 12, 1994, your affiant filed a motion for reconsideration of the denial of the motion to disqualify, stating that JUDGE DAVIES failed to consider the due process violation and

had not received the evidence of criminal violation by JUDGE REAL in dismissing the complaint without notice and opportunity to your affiant by the time he denied disqualification.

29. That on May 18, 1994, JUDGE JOHN G. DAVIES denied reconsideration, a copy of which order is attached hereto as "EXHIBIT VI" and made a part hereof.

30. That as shown by EXHIBIT VI, regarding the due process issue, JUDGE DAVIES never mentioned the term "due process".

31. That by failing to deal with the due process violations, even on reconsideration as requested by your affiant, JOHN G. DAVIES has willfully and knowingly evaded the prohibition under Title 18 U.S.C. §242 of the deprivation of a defined constitutional or other federal right as specifically described by your affiant in the motions before him. (See *Screws v. United States* (1945) 325 U.S. 91, 104).

32. That as shown by EXHIBIT VI, regarding the criminal issue, JUDGE DAVIES stated "Plaintiff's decision to request the criminal prosecution of Judge Real is not a material new fact under Local Rule 7.16(b). The request is not evidence that Judge Real is biased or prejudiced with respect to plaintiff. Rather, it is a reaffirmation by plaintiff that Judge Real acted improperly. Merely because a litigant has complained to prosecutorial authorities about a judge's behavior does not mean that the judge is biased or prejudiced against the litigant."

33. That in making such statements, JOHN G. DAVIES failed to describe the particulars of the criminal conduct made prima facie by the evidence.

34. **That by failing to discuss this evidence, JOHN G. DAVIES willfully and knowingly evaded the prohibition under Title 18 U.S.C. §242** of the deprivation of a defined constitutional or other federal right as was particularly described by your affiant in the motion for reconsideration before him. (See *Screws (supra)* 325 U.S. at 104).

35. That in so acting, **JOHN G. DAVIES has by omission aided and abetted MANUEL L. REAL to violate Title 18 U.S.C. §242** against your affiant by associating himself with such wrongdoing to deprive your affiant of his right to due process of law which has been made specific and definite by published court

decisions interpreting such right, participating therein and seeking thereby to make such venture succeed. (See *Nye & Nissen v. United States* (1949) 336 U.S. 613, 619).

36. That on June 9, 1994, your affiant filed in District Court an affidavit regarding the proceedings that took place on June 6, 1994, before MANUEL L. REAL, a copy of which is attached hereto as "EXHIBIT VII" and made a part hereof.

37. As stated under oath by affidavit, your affiant appeared in Room 8 of the United States District Court on June 6, 1994, for hearing on the motion to vacate JUDGE REAL's void order of dismissal.

38. That your affiant specifically requested in said motion to vacate that the court provide formal findings of fact and conclusions of law to substantiate summary dismissal of the complaint.

39. That in deciding the motion to vacate, your affiant formally requested in writing that JUDGE REAL take judicial notice of the following:

(a) The existence and contents of the 'Notice of Motion and Motion To Disqualify Federal District Judge Manuel L. Real etc.' consisting of ten pages, filed April 28, 1994;

(b) The existence and contents of the 'Supplemental Declaration In Support of Motion To Disqualify Judge Manuel L. Real' consisting of seven pages including the 'Request for Criminal Complaint Against Manuel L. Real Under Title 18 U.S.C. §242' as Exhibit A thereto, filed May 9, 1994;

(c) The existence and contents of the 'Notice of Motion and Motion For Reconsideration etc.' consisting of ten pages, filed May 12, 1994.

40. That besides the formal request that judicial notice be taken by JUDGE REAL, a copy of each of the above three documents had been served by mail upon MANUEL L. REAL on the respective dates of filing, giving him actual notice thereof.

41. That at 10:45 a.m. on June 6, 1994, your affiant was called by JUDGE MANUEL L. REAL for the hearing on the motion to vacate his void order of April 6th, summarily dismissing the complaint without having given your affiant notice and opportunity to respond and be heard on the intention to dismiss, at which time all of the matters described in the affidavit (EXHIBIT VII) were before

the court on notice.

42. That JUDGE REAL failed to discuss any of the issues before the court, as described in the affidavit (EXHIBIT VII), including the evidence presented of criminal conduct by MANUEL L. REAL under Title 18 U.S.C. §242.

43. That JUDGE REAL failed to discuss the issue of self-disqualification under Title 28 U.S.C. §455 in light of the facts then before him regarding disqualification by motion under Title 28 U.S.C. §144.

44. That JUDGE REAL failed to discuss the facts alleged in the complaint, nor did he attempt to substantiate his order of April 6th summarily dismissing the complaint without notice.

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45. That the acts and omissions of JUDGE JOHN G. DAVIES, hereinabove described relating to his denial of the motion to disqualify JUDGE MANUEL L. REAL, left the way open for JUDGE REAL to remain on the case at the time of hearing on the motion to vacate his void order summarily dismissing the complaint without notice, held June 6, 1994, and for JUDGE REAL to again for the second time in this case act in open defiance and reckless disregard of constitutional requirements that have been made specific and definite by published court decisions interpreting them as he had done the first time, violating for the second time the prohibition of the deprivation of a defined constitutional or other federal right of your affiant under Title 18 U.S.C. §242. (See *Screws (supra)* 325 U.S. at 104).

46. That apart from the substantive offense of aiding and abetting in the violation of Section 242 by JOHN G. DAVIES, as hereinabove described, **your affiant requests that both MANUEL L. REAL and JOHN G. DAVIES be prosecuted for the violation of Section 241 of Title 18, a felony, for conspiring to violate Section 242 in the deprivation of defined constitutional rights** of your affiant in open defiance and reckless disregard of such constitutional requirements that have been made specific and definite by court decisions interpreting them which have been brought to their attention in writing, making them both aware of such violations as described herein.

47. That the U.S. Supreme Court has ruled "**One who does act**

with such specific intent is aware that what he does is precisely that which the statute forbids. He is under no necessity of guessing whether the statute applies to him [citation omitted] for he either knows or acts in reckless disregard of its prohibition of the deprivation of a defined constitutional or other federal right." *Screws v. United States (supra)* 325 U.S. 91, 104).

48. That the U.S. Supreme Court has ruled that "the commission of the substantive offense and a conspiracy to commit it are separate and distinct offenses." *Pinkerton v. United States* (1946) 328 U.S. 640, 643.

49. The U.S. Supreme Court has also ruled that "if a conspiracy is also charged, it makes no difference so far as aiding and abetting is concerned whether the substantive offense is done pursuant to the conspiracy." *Nye & Nissen v. United States (supra)* 336 U.S. at 620.

50. **That according to the facts herein stated, which are verified by the record in USDC Civil Case No. CV 94-1932-R, your affiant believes that evidence exists for the filing of a criminal complaint against the alleged wrongdoers as follows:**

Against MANUEL L. REAL:
Count I 4/6/94 Violation of 18 U.S.C. §242;
Count II 6/6/94 Second violation of 18/§242;
Against JOHN G. DAVIES:
Count I 5/6/94 Aiding and abetting 18/§§2 & 242;
Count II 5/18/94 Second count of aiding and abetting;
Against MANUEL L. REAL and JOHN G. DAVIES jointly:
Count I 5/6/94)
5/18/94) Violation of 18 U.S.C. §241, a felony
6/6/94)

51. That since the occurrence of the above events, your affiant received a document dated November 28, 1994, from DONNA J. EVERETT on behalf of NORA M. MANELLA, United States Attorney in Los Angeles, wherein the dismissal of the case by MANUEL L. REAL is being relied on by the United States Attorney stating **"Appellant himself alleges that the complaint**

was dismissed by the district court on April 7, 1994. Blue Brief, at 31. Since the complaint was dismissed, there was no action

pending in district court....", a copy of which portion is attached hereto as "EXHIBIT VIII" and made a part hereof. A copy of "Blue Brief, at 31" is attached hereto as "EXHIBIT IX" and made a part hereof for a true reading.

52. That at no time did the United States Attorney discuss the *Clinton* case (EXH. II) or the *California Diversified Promotions* case (EXH. III), both of which cases along with the circumstances described in this affidavit were discussed at length in the "Blue Brief."

53. That the United States Attorney knew about the circumstances surrounding the dismissal of the case by MANUEL L. REAL at the time of making the above statement and failed to account for them. That accordingly, the United States Attorney in Los Angeles has acquiesced in the criminal conduct.

54. That your affiant stands ready, willing, and able to testify under oath before a magistrate regarding the statements herein made.

55. That since U.S. Attorney Nora M. Manella serves at the will and pleasure of the President, a copy of this Affidavit is being directed to him for consideration.

Subscribed under oath:

/s/____________________ 12-9-94
RONALD BRANSON, Affiant

Subscribed and sworn to before me
this 9th day of December, 1994, at
N. Hollywood, California.
/s/ James G. Selimos
Notary Public in and for the
County of Los Angeles,
State of California.

My commission expires Mar. 1, 19 96 .

[Notary Seal]

EXCEPTION TO ORDER OF DECEMBER 9, 1994;
MOTION FOR REHEARING OF RECUSAL MOTION
(Minus Exhibit)

United States Court Of Appeals
For The Ninth Circuit

Case No. 94-55951

RONALD BRANSON
Plaintiff and Appellant

vs.
BETTY B. FLETCHER, personal capacity; DIARMUID F. O'SCANNLAIN, personal capacity; ANDREW J. KLEINFELD, personal capacity; WILLIAM D. KELLER, personal capacity,
Defendants and Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
Honorable MANUEL L. REAL, District Judge
No. CV 94-1932-R

EXCEPTION TO ORDER FILED DEC. 9, 1994; MOTION FOR REHEARING OF RECUSAL MOTION

RONALD BRANSON
Plaintiff/Appellant
10853 White Oak Avenue
Granada Hills, CA 91344
(818) 446-8356

EXCEPTION TO ORDER FILED DEC. 9, 1994; MOTION FOR REHEARING OF RECUSAL MOTION

Appellant RONALD BRANSON excepts to the Order filed December 9, 1994, a copy of which is attached as "EXHIBIT A" and made a part hereof, and makes this motion for rehearing pursuant to Cir.Rule 27-10 of the motion for recusal of the Ninth Circuit for the following reasons: **(1)** There is no basis in law or fact for construing the "Declaration of Appellant Ronald Branson in Objection to Appearance by Appellees" as a motion for default judgment; **(2)** The question of appellees' standing to appear in this appeal is unaddressed and unresolved; **(3)** The conflict of interest with the Ninth Circuit is unaddressed and unresolved; **(4)** The court failed to identify and evaluate the facts stated in the motion that might reasonably cause an objective observer to question the impartiality of the Ninth Circuit; **(5)** Judge Trott should personally recuse himself from involvement on a separate basis from Ninth Circuit recusal.

MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF EXCEPTION TO THE ORDER AND MOTION FOR REHEARING

1. The court has shown no basis whatsoever to construe appellant's declaration as a motion for default judgment.

Appellant's first exception is to the court's "constru[ing]" the "Declaration of Appellant Ronald Branson" as a "motion for default judgment." [EXHIBIT A]. It is appellant's contention that the court is jurisdictionally barred from doing so. It is not within the purview of the facts of this case for the court to entertain "default judgment". Absent the ***entry of default*** there could be no "motion for default judgment". Such motion, in addition to being inappropriate, would also be frivolous under the circumstances. Such **misconstruing** of appellant's declaration has done a disservice to appellant and runs counter to appellant's intentions put forth by his declaration.

Furthermore, the declaration does not meet the criteria for motions according to FRAP Rule 27(a). It does not state grounds that would support a motion for default judgment nor does

it set forth any relief being sought (certainly not for default judgment).

Appellant requests that the court cite the basis in law and fact for its decision to construe the declaration in objection to appearance by appellees as a "motion for default judgment."

2. ***The court has not addressed or resolved the issue of standing of appellees to appear.***

Appellant's second exception is to the court's evasion of the issue of standing of the "appellees" to appear in this appeal, which evasion appears to be an intentional tactical maneuver of avoidance by the court's unfounded conversion of appellant's declaration, initially bringing the issue of standing to the court's attention, into what the court chose to label "a motion for default judgment" [EXHIBIT A]. As part of that apparent manipulation is the court's ordering by its Order filed Friday, December 9, 1994 that "[t]he briefing schedule established on November 10, 1994 [29 days earlier] shall remain in effect", while knowing, or reasonably being expected to know, that such schedule would be ***impossible*** to maintain since the earliest appellant would have become aware of said Order would be Monday, December 12th-- ***the very day appellant's Reply Brief would be due,*** thus depriving appellant the due process of proper notice. Nevertheless, on December 6th, appellant concluded his "Reply to Questionable Appearance of Defaulting Defendants/Appellees" by stating: "However, appellant reserves the right to address the arguments made in the purported 'Appellees' Brief ***if and when appellees' standing to appear is determined by a disinterested court to be valid as a matter of law.***" (emph.added) [Reply 2:9-12] --bringing the issue of standing again squarely before the court; and the settlement of which any legal recognition of the so-called "Appellees' Brief" and hence, an opportunity to file a "Reply Brief" depends. Until that jurisdictional issue is decided by a disinterested court, the November 10th briefing schedule is moot by operation of law.

The question of standing of appellees is clearly before this court, **first** by appellant's declaration "in objection to appearance by appellees" as aforesaid; **second** by appellant's motion for recusal directly referring to that declaration, stating in pertinent part "That I listed ten reasons for my objection, citing my opening brief and the record to show that the defendants failed to answer or otherwise defend in this action; that they have not appeared whatsoever in this litigation; that I requested entry of default, but Judge Real blocked entry of default by his arbitrary action described in the brief; that the failure to enter default is one of the issues on appeal; that under the circumstances, defendants (appellees) have no standing to [appear] and argue the matters on appeal, nor does the U.S. Attorney's Office have standing to do so on their behalf...." [Motion 10:14-20]; and **third,** by "Appellant's Reply to Questionable Appearance of Defaulting Defendants/Appellees" filed December 6, 1994, as aforesaid, which cites: "**1.** The challenge to the standing of appellees to appear is unopposed and unresolved" [Reply 1:4-5], referring to the motion for recusal then pending. Appellant quoted from the portion of the declaration at page 10 (as quoted above), pointing out that "appellant has received no opposition whatsoever to the Motion and accordingly, the facts stated therein are deemed admitted" [Reply 2:1-2]. "**2.** The purported 'Appellees' Brief' is moot and void" [Reply 2:4], stating "The record shows that the Court of Appeals has no personam jurisdiction over the appellees in default and out of court, as they have made no appearance since the inception of this case. The Motion pending before the appellate court is unopposed and still undecided. Accordingly, the purported 'Appellees' Brief' is moot and void as a matter of law and cannot be recognized. However, appellant reserves the right to address the arguments made in the purported 'Appellees' Brief' ***if and when appellees' standing to appear is determined by a disinterested court to be valid as a matter of law."*** (emph.added) [Reply 2:5-12].

The issue of **standing of the appellees in this appeal is jurisdictional** and must be evaluated by the court. Until it is, the purported "Appellees' Brief" cannot be recognized in this appeal. [Reply 2:8-9]. Appellant requests that the standing issue be determined by law.

3. The conflict of interest issue has not been addressed or resolved by the court.

Appellant's third exception to the Order is the court's failure to address the conflict of interest issue to which the motion for recusal of the Ninth Circuit was specifically directed. "This motion is directed to the conflict of interest that exists with the Ninth Circuit." [Motion 1:17]. The conflict of interest issue has a direct bearing on the impartiality issue under §455(a). The conflicts of interest brought to the court's attention by the motion raise questions about the impartiality of the Ninth Circuit to hear this appeal and they must be discussed and evaluated by the court in accordance with the purpose of that statute.

One of the conflicts mentioned is the fact that three of the defendants are themselves Ninth Circuit judges. "This conflict of interest is even more pronounced with the Ninth Circuit since three of the four defendants are among 'their own' and despite the fact that Judge Real's similar conduct has been reversed at least twice before in previous cases, those cases didn't involve Ninth Circuit colleagues. Under the circumstances, to avoid any appearance of impropriety this case should be referred to another Circuit or certified directly to the U.S. Supreme Court." [Motion 3:5-10]. "...it is my judgment that the fact that Ninth Circuit judges are named as defendants in this case would ***alone*** be enough for the average person on the street to reasonably question the impartiality of the Ninth Circuit to fairly handle and decide this appeal." [Motion 8:25-28]. "That the conflict of interest goes beyond the named individuals themselves, but extends throughout the entity as fellow colleagues within that entity." [Motion 9:3-4]. "...the great distinction is that, unlike the previous cases, my case names as defendants Ninth Circuit judges in their personal capacity as individuals, which places the Ninth Circuit in an awkward position of having to rule against their own co-workers in order to uphold their own case precedent." [Motion 9:13-16]. Appellant requests that the conflict arising out of Ninth Circuit judges as defendants be addressed and resolved by the court.

Another conflict of interest brought to the court's attention involves the impropriety of the Ninth Circuit contacting the U.S. Attorney's Office and inviting it into this appeal on behalf of appellees. "...there appears to be, and I thereon believe there to be, actual acts of impropriety initiated by the court in reaching out to the U.S. Attorney's Office in an attempt to draw in opposing counsel into this appeal..." [Motion 2:3-5]. "...I have been prompted to file this motion for recusal since some administrative matters have taken place that, according to the facts of this case, are inappropriate and will invite further abuse of the judicial process in this appeal." [Motion 10:5-7]. "I do not know how or why the U.S. Attorney's Office is just now becoming involved in this case; that I never notified that office about this appeal and can only conclude that they were contacted unilaterally by the court." [Motion 10:21-24].

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Canon 3A(4), Code of Judicial Conduct, states "A judge should... except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert [emph. added] ..." provided he give the parties notice, etc. By arranging for the U.S. Attorney's Office to appear for the first time on appeal representing these appellees who have never made an appearance in this litigation, the Ninth Circuit court gives the defendants (appellees) a "second bite of the apple" after having failed to defend at any time in district court, and now being allowed to present their defense for the first time at the appellate stage.

This court must address the conflict involving their impropriety of contacting the U.S. Attorney's Office in violation of the Code of Judicial Conduct and inviting it to appear.

A third conflict of interest is the fact that the judges of the Ninth Circuit, who would sit in judgment of this appeal, share the same legal counsel of the U.S. Attorney's Office, as do the defendants. "As to the U.S. Attorney's Office contacted by the court, I also believe that all judges in the Ninth Circuit share the very same and identical attorney/client relation as do the defendants in this appeal. Counsel for the judges herein and for the defendants are one and the same." [Motion 2:7-10]. "That I now foresee further abuse of the judicial process by the court and by the U.S. Attorney's Office; that I am aware that the U.S. Attorney's Office is legal counsel for all federal judges, including for the Ninth Circuit Court of Appeals; that accordingly I foresee the U.S. Attorney's Office taking advantage of their status to enter this case at this time in violation of due process of law, leading to an unfair decision-making process in this appeal; that I foresee the U.S. Attorney's Office providing the 'script' for their clients, the Ninth Circuit Court, to follow in deciding this appeal; that I foresee the Ninth Circuit Court being placed in a position of following orders from 'their legal counsel' in deciding this appeal." [Motion 11:5-12]. Appellant requests that the court address and resolve the conflict of interest involving the status of the U.S. Attorney's Office as legal counsel for the appellees herein, being the same as that of the Ninth Circuit judges who would be the reviewing tribunal of this appeal --the court and appellees having the same legal counsel. Appellant requests that any other conflicts of interests that are mentioned in the motion, or even if not mentioned, be discussed and evaluated under §455(a).

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4. *The court failed to carry out the intent of Congress under 28 U.S.C. §455(a).*

As cited in the Motion, the U.S. Supreme Court interpreted the intent of Congress in enacting Title 28 U.S.C. §455(a) by stating "The very purpose of §455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible. [citation]. Thus, it is critically important in a case of this kind to identify the facts that might reasonably cause an objective observer to question... impartiality." [emph. added] *Liljeberg v. Health Services Acquisition Corp.* (1988) 486 U.S. 847, 865. [Motion 4:9-13]. Appellant's fourth exception to the Order [EXHIBIT A] is the failure of the Ninth Circuit to carry out this "critically important" function. Unless it does so, **the court will be in violation of the statute and the intent of Congress as long as they participate in this case.**

Appellant has expressed doubt that the Ninth Circuit could carry out that function fairly: "Appellant points out ... that the conflict of interest here will unfairly affect the judgment of the Ninth Circuit ***in deciding this motion*** (emph.added). Appellant does not believe the Ninth Circuit can view the facts supporting this motion as a 'reasonable' **and disinterested** man, as a member of the 'general public.' (emph. in orig.) [Motion 4:25-28]. The real question is whether the Ninth Circuit is capable of "identify[ing] the facts" as an "objective observer." Appellant contends that the answer is a resounding "NO" --particularly after showing its hand in the way it has already handled the Motion in violation of §455(a). Appellant further contends that it is both likely and probable that the Ninth Circuit will disregard this motion for rehearing by denying it without comment; the court will continue its "avoidance maneuvers" by evading the facts and foreclosing this motion redress. The truth is that the Ninth Circuit court has ceased to function as an "umpire" and has become a "player in the field".

Unfortunately, there is no provision mandating that motions under §455(a) be decided by a disinterested tribunal which, in this case, is disastrous as the evidence shows! "Section 455 ... sets forth no procedural requirements. That section is directed to the judge, rather than the parties, and is self-enforcing on the part of the judge." *State of Idaho v. Freeman* (D.Idaho 1981) 507 F.Supp. 706, 726. The problem in the instant appeal is that there is no real distinction between "the judge(s)" and "the parties" (defendants). "Moreover, section 455 includes no

provision for referral of the question of recusal to another judge; if the judge sitting on a case is aware of grounds for recusal under section 455, ***that judge has a duty to recuse himself or herself.***" (emph.added) *Id.* The problem here is that the Ninth Circuit is refusing to acknowledge any "aware[ness] of grounds for recusal under section 455." As appellant stated "...I have no reason to believe that the Ninth Circuit would not be in the same state of denial as the district judges. Based on what has taken place in district court with this case, I am of the opinion that the reasonable man would doubt that camaraderie would not overcome attention to the facts of this case and the law applicable thereto in order to act with impartiality in deciding this appeal. That I have found from my experience that members of judiciary jealously guard each other to the point of departing from established procedure and disregarding facts appearing on the face of the record." [Motion 9:26 - 10:4]. Appellant "rests his case" vis-à-vis the Order of December 9th. Appellant's suspicion is being proved to a "T".

Whether or not it can or will be done fairly, this court at a minimum **must** "identify the facts that might reasonably cause an objective observer to question impartiality." Appellant contends that the "objective observer" qualification creates an ***impossibility*** for the Ninth Circuit to perform that function in accordance with the intention and purpose of Congress under §455(a). The Supreme Court has established the standard of "avoiding even the appearance of impropriety" under §455(a). The procedure under the "appearance of partiality" approach is described as follows: "...[T]he motion [under §455(a)] would call certain facts to the judge's attention. He would then be called upon to evaluate all the relevant facts relating to the question of an appearance of partiality. In so doing, a judge is under the obligation to go beyond the actual facts alleged and determine whether a reasonable, **disinterested observer** knowing all the facts would question the judge's appearance of impartiality." (emph.added) *State of Idaho v. Freeman (supra)* 507 F.Supp. at 727.

Accordingly, this court **must** follow those procedures which comport with the standard set forth by the Supreme Court in *Liljeberg (supra).* The Order of December 9th [EXHIBIT A] clearly does not meet the required criteria established for deciding a motion under §455(a).

5. ***Judge Trott should recuse himself personally on a separate basis from Ninth Circuit recusal.***

In the case of *Branson v. City of Los Angeles,* the underlying case (the original case before Judge Keller, now a defendant here), it reads: "The original panel comprised Judges Hug, Hall, and Trott. **Judge Trott, who recused himself**, was replaced by Judge Nelson. The panel directed that case be argued before the new panel." 912 F.2d 334, 335 (fn.). (emph.added) (It appears quite doubtful that case will ever reach the point of "finality" the way things have been going since that time.)

The facts that existed for the recusal of Judge Trott then are the same now. Appellant knows Judge Trott as "Steve" --a personal friend and not as a judge. Appellant is confident that Steve should come to realize that he, of all people, should not be involved in this debacle. More is stated in the supporting declaration that follows.

Dated: December 15, 1994

/s/________________________
RONALD BRANSON, Appellant

DECLARATION OF RONALD BRANSON IN SUPPORT OF MOTION FOR REHEARING OF MOTION FOR RECUSAL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, RONALD BRANSON, declare and say:

That I am the appellant in this appeal, Case No. 94-55951, and the movant for recusal of the Ninth Circuit Court of Appeals for the reasons set forth in my motion. That the facts herein stated are personally known to me to be true and that I could competently testify thereto if called upon as a witness to do so. That matters herein stated of a conclusory nature are based on my opinion, information, and belief, an as to those matters, I believe them to be true.

That I was greatly concerned when I saw the name "Trott" among the judges involved in the subject Order. That I have personally known Trott long before he became a judge, and I call him "Steve". That I find it awkward to refer to him as "Judge Trott". That I have always held Steve in the highest esteem and respect as a brilliant legal scholar and prosecutor, and even more importantly, as a friend who has been down to earth and one with whom I have had the pleasure of having "common sense" discussions. He is a musician, a magician, a linguist, a speed-reader, an entertainer, and he loves his family-- which are among many attributes that I personally know that could be said about his personal character and talents. That Steve knows that I am a man of principle and he has respected me as such. That I know Steve to be a very humble and condescending individual. That I believe that had Steve realized that I am the same person as in the earlier case in which he recused himself, he would not want to be involved here.

That I say all that to say this: That as difficult as this entire episode has been for me, it would be most egregious and regrettable if Steve would force me to involve him in any way. That there can be no question that the judicial proceedings have indeed become ugly, as can be seen from reading my opening appellate brief. That it is not anything I would want to see Steve become involved in, but that nevertheless I would painfully face up to it if I had to; that I remain committed in pursuing truth to whatever end is required. That I know that Steve knows that this endeavor is a matter of conscience on my part and revolves around my faith in Jesus Christ and

my love of country, freedom, and the Constitution. That Steve knows that I am not a quitter.

That regarding this motion for rehearing, the facts set forth in my motion for recusal speak for themselves. Clearly this court has not followed proper procedure in deciding the motion under §455(a). The named defendants (Ninth Circuit judges) didn't follow their own rules in the appeal of the underlying case; Judge Real didn't follow proper procedure in dismissing my complaint without notice and opportunity for me to respond first; Judge Real interfered in the proper procedure of the purely clerical responsibility of entering default; Judge Davies didn't follow proper procedure in deciding the matter of disqualification; and now the Ninth Circuit is joining the fray. It's all a matter of record!

That the U.S. Attorney (Everett) refers to a "Blue Brief" in the so-called "Appellees' Brief"; that I never sent that office, or any of the defendants, a **"Blue Brief". Where did they get it? There is only one unrefuted conclusion: It was given to them by the court, a violation of the Code of Judicial Conduct.** The only remaining question is, **WHY?**

That the improprieties of the court continue unbridled and unabashedly. That I have found that the judicial system just doesn't work. I have been repeatedly closed out, since the inception of my legal pursuits, from being able to adjudicate federal questions. That it is now a matter of suing the judges who **repeatedly violate procedure**. That it is continuing to happen in this proceeding. That I have about exhausted all judicial remedies and am forced to go to Congress for a remedy.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct according to my personal knowledge or upon my information and belief.

Executed this 15 day of December, 1994, at Los Angeles, California.

/s/________________________
RONALD BRANSON, Appellant

COMPLAINT OF JUDICIAL MISCONDUCT
(Minus Exhibits)

JUDICIAL COUNCIL OF THE NINTH CIRCUIT
COMPLAINT OF JUDICIAL MISCONDUCT
(Title 28 U.S.C. §372(c))

Complaint Form (Rule 2(a)) - (Taken from the Appendix to the Rules of the Judicial Council)

1. Complainant's name: RONALD BRANSON
Address: 10853 White Oak Ave., Granada Hills, Calif. 91344
Daytime telephone: (818) 446-8356

2. Judges complained about:

MANUEL L. REAL, U.S. District Court, Central Dist. of California (Los Angeles)

JOHN G. DAVIES, U.S. District Court, Central Dist. of California (Los Angeles)

DOROTHY W. NELSON, U.S. Court of Appeals for the Ninth Circuit

CYNTHIA HOLCOMB HALL, U.S. Court of Appeals for the Ninth Circuit

3. Does this complaint concern the behavior of the judge in a particular lawsuit or lawsuits?

YES

Court & Docket No. District Court No. CV 94-1932-R
Court of Appeals No. 94-55951

Are you a party or lawyer in the lawsuit? PARTY

If a party, give the name, address, and telephone number of your lawyer: N/A

Docket numbers of any appeals to the Ninth Circuit: (pending cases)

No. 94-55951 Pending appeal and collateral recusal matter (Involved in this complaint)

No. 94-55332 Pending appeal and setting of oral argument (NOT involved in this cmplt)

4. Have you filed any lawsuits against the judge?

NO - not the ones complained of here.

5. On separate sheets of paper, not larger than the paper this form is printed on, describe the conduct ... that is the subject of this complaint. See rules 2(b) and 2(d). Do not use more than 5 pages (5

sides). Most complaints do not require that much.

See attached declaration of Statement of Facts (Rule 2(b)).

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6. You should either:

(1) Check the first box below and sign this form in the presence of a notary public; or

(2) Check the second box and sign the form. You do not need a notary public if you check the
second box.

( ) I swear (affirm) that --

(x) I declare under penalty of perjury --

I have read rules 1 and 2 of the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability, and the statements made in this complaint are true and correct to the best of my knowledge.

/s/ Ronald Branson
(Signature)
Executed on 12-17-94
(Date)

Sworn and subscribed to before
me ______________________
(Date)

N/A

____
(Signature of Notary Public)

My commission expires: ____________

Effective April 13, 1993.

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DECLARATION OF RONALD BRANSON OF STATEMENT OF FACTS SUPPORTING COMPLAINT OF JUDICIAL MISCONDUCT

Statement of Facts (Rule 2(b))

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, RONALD BRANSON, declare and say:

1. That the facts herein stated are personally known to me to be true and that I could competently testify thereto if called upon as a witness to do so. That other matters herein stated of a conclusory nature are based on my opinion, information, and belief; and as to those matters, I believe them to be true.

2. That I am the complainant herein, the plaintiff in USDC Case No. CV 94-1932-R, the appellant in USCA Case No. 94-55951, and the movant for recusal of the Ninth Circuit Court of Appeals in the aforementioned appeal.

3. That the matter which I bring to the attention of the Judicial Council of the Ninth Circuit Court of Appeals is not about any decisions made within the discretion of any court, but deals exclusively with the failure of the judges complained of to act within the scope of delegated authority, which failure is prejudicial to the effective and expeditious administration of the business of the courts.

4. That regarding MANUEL L. REAL, District Judge in Los Angeles, this complaint involves the criminal conduct in USDC Case No. CV 94-1932-R in direct, deliberate, and knowing contravention of Ninth Circuit precedent established by *Clinton v. Los Angeles County, et al.* (9th Cir.1970) 434 F.2d 1038, and *California Diversified Promotions, Inc. v. Musick* (9th Cir.1974) 505 F.2d 278, 281, 284, details of which are more fully set forth in my Affidavit to the U.S. Attorney General dated December 9, 1994, a copy of which accompanies this complaint.

5. That also regarding MANUEL L. REAL, this complaint is about his unauthorized interference in the clerical duties of the default clerk to enter the default of the non-appearing defendants in USDC Case No. 94-1932-R, more fully described in my opening brief on appeal in USCA Case No. 94-55951, at pages 31-32.

6. That regarding JOHN G. DAVIES, District Judge in Los Angeles, this complaint is about his unlawful, knowing, and deliberate refusal to exercise the discretion vested in him when deciding the disqualification of Judge Real, which details are set forth in the opening appellate brief at pages 28-30.

7. That regarding JOHN G. DAVIES, this complaint is also about his deliberate failure to prevent the disqualification of Judge

Real by refusing to consider the procedural violations that had already amounted to criminal conduct on the part of Judge Real, and thereby joining in such conduct as more fully described in the accompanying Affidavit to the U.S. Attorney General.

8. That regarding DOROTHY W. NELSON and CYNTHIA HOLCOMB HALL, Circuit Judges of the U.S. Court of Appeals, Pasadena, California, this complaint is about the conduct described in my Exception to Order Filed December 9, 1994, and Motion for Rehearing of Recusal Motion, accompanying this complaint, regarding the failure to follow the mandatory requirements of Title 28 U.S.C. §455(a) in deciding my motion for recusal of the Ninth Circuit.

9. That I have suggested that Judge Trott, also named on the December 9th order, recuse himself as my personal friend, for the reasons set forth in my declaration supporting the Exception document herewith; that accordingly I do not, for friendship sake, include him in this complaint.

10. That it is my opinion and belief that the conduct described in the two documents accompanying this complaint meets the criteria under Title 28 U.S.C. §372(c) and the Rules of the Judicial Council of the Ninth Circuit. That I have read the commentary on Rule 1 "Advice to Prospective Complainants on Use of the Complaint Procedure" and have concluded in good faith that my complaint does not abuse this procedure.

11. That if the Judicial Council in considering this complaint has any doubts or confusion about the integrity of this complaint under the criteria set forth in the rules and according to the intention of Congress under Section 372(c) and related statutes, I stand ready, willing, and able to testify under oath regarding this matter and to provide whatever additional materials may be necessary for the Council's evaluation, and to otherwise assist in any way possible.

12. That by the compounded violations of judicial procedure and deliberate refusals to exercise vested authority and jurisdiction, I am being repeatedly blocked from access to the federal court processes to adjudicate the federal questions which I have presented and for which I have paid full fees and have cooperated with the rules.

13. That the reason I am bringing this matter to the attention of the Judicial Council is that I anticipate that the Ninth Circuit judges involved will disregard [the] motion for rehearing by denying it without comment and will continue its "avoidance maneuvers" by evading the facts and foreclosing this motion redress and request that the Judicial Council correct the problems before they are further compounded.

14. That besides the details set forth in the accompanying documents, the record on appeal in USCA Case No. 94-55951 to which I believe the Judicial Council has access, describes the background of this matter, fully documenting my allegations herein stated.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct according to my knowledge, information, and belief.

Executed this 17 day of December, 1994, at Los Angeles, California.

/s/____________________________
RONALD BRANSON, Complainant

Encls.

LETTER FROM COURT OF APPEALS 1/12/95

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
121 Spear Street, P.O. Box 193939
San Francisco, CA 94105-3939

January 12, 1995

CA No. 94-55951 Branson v. Fletcher

To All Parties:

The United States Court of Appeals for the Ninth Circuit is considering submission of your case without oral argument. You have ten (10) days from the date of this letter to present a statement setting forth the reasons why oral argument should be heard in this case. See 9th Cir.R. 34-4. Please send an original and three (3) copies of your statement to Clerk's Office in San Francisco, and show proof of service to opposing counsel.

The court welcomes additional citations, without argument, of relevant decisions rendered since the filing of a party's last brief. See Fed.R.App.P. 28(j). Send an original and three (3) legible copies to the Clerk's Office, on letter size paper, with proof of service on all parties.

Very truly yours,
Cathy A. Catterson
Clerk of Court

By: Tim Hom
Deputy Clerk

OBJECTION TO SUBMISSION OF APPEAL
(Minus Exhibits)

United States Court Of Appeals
For The Ninth Circuit

Case No. 94-55951

RONALD BRANSON

Plaintiff and Appellant

vs.

BETTY B. FLETCHER, personal capacity; DIARMUID F. O'SCANNLAIN, personal capacity; ANDREW J. KLEINFELD, personal capacity; WILLIAM D. KELLER, personal capacity,

Defendants and Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
Honorable MANUEL L. REAL, District Judge
No. CV 94-1932-R

OBJECTION TO SUBMISSION OF APPEAL
(filed concurrently with Supplement to Complaint of Judicial Misconduct – Docket No. 94-80469)

RONALD BRANSON
Plaintiff/Appellant
10853 White Oak Avenue
Granada Hills, CA 91344
(818) 446-8356

OBJECTION TO SUBMISSION OF APPEAL

(filed concurrently with Supplement to Complaint of Judicial Misconduct Docket No. 94-80469)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED -
# P-498 824 905

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, RONALD BRANSON, declare and say:

1. That I am the appellant herein; that all facts herein stated are personally known to me to be true and that I could competently testify thereto if called upon as a witness to do so; that other matters herein stated of a conclusory nature are based on my opinion, information, and belief, and as to those matters, I believe them to be true.

2. That I object to the letter dated January 12, 1995, a copy of which is attached hereto as "EXHIBIT (1)" and made a part hereof, stating "The United States Court of Appeals for the Ninth Circuit is considering submission of your case...." while there is yet pending and undecided my Exception to the Order filed December 9, 1994 and Motion for Rehearing of the Recusal Motion, a copy of which document is attached hereto as "EXHIBIT (2)".

3. That EXHIBIT (2) shows that pending before the "United States Court of Appeals for the Ninth Circuit" and more specifically before Judges D.W. NELSON, HALL and TROTT, are the questions of :

(a) appellees' standing to appear in this appeal, which brings in the question of the *existence* of "opposing counsel" in this case;

(b) the conflicts of interest of the Ninth Circuit Court of Appeals in deciding this appeal, arising out of Ninth Circuit judges being defendants and fellow colleagues, and arising out of the U.S. Attorney being legal counsel for ***both*** the Ninth Circuit Court defendants ***and*** the Ninth Circuit Court judges sitting in judgment;

(c) the misconduct of the Ninth Circuit Court of Appeals contacting the U.S. Attorney, "the other side", *ex parte* in violation of the Code of Judicial Conduct; and giving them "the Blue Brief", as the U.S. Attorney chose to call it.

---------------------------------I---------------------------------

(d) the Court's failure to identify the facts that might reasonably cause an objective observer to question impartiality, as required by law in deciding the recusal motion under 28 U.S.C. §455(a).

4. That before this appeal can proceed "to submission" ***with or without oral argument***, the above questions must be addressed and resolved. As stated, whether the Ninth Circuit, in its current state of denial, is capable of facing off with these issues, is dubious.

5. That I do not waive my right to oral argument in this appeal at such time as it becomes appropriate to conduct oral argument before a disinterested and impartial court.

6. That the Ninth Circuit Court, in its current state of denial, is now railroading this appeal through a ***sham briefing schedule*** and a ***sham submission of the case*** while the serious questions raised are ignored by the Court and remain unresolved in violation of my rights to fair and lawful procedures.

7. That the current lawsuit against the judicial defendants is based on their failure to comply with procedural law, ethics and propriety in the underlying case; that such judicial misconduct is now being compounded by misconduct of the judiciary handling this "remedial" suit. That instead of the Court providing the required remedy for alleged previous wrongdoing, it creates ***further wrongdoing*** itself, causing more damage with no relief in sight.

8. That a Complaint of Judicial Misconduct involving Judges D.W. NELSON and HALL, before whom the above questions are pending, has been directed to the Judicial Council of the Ninth Circuit under 28 U.S.C. §372(c), Docket No. 94-80469, a copy of the acknowledgement of which is attached hereto as "EXHIBIT (3)" and made a part hereof.

9. That to my knowledge there is no decision by Judge TROTT, i.e., "Steve", who is part of that judicial panel, on whether he wishes to recuse himself based on our personal friendship.

10. That I am filing concurrently herewith a Supplement to the Complaint of Judicial Misconduct to the Judicial Council of the Ninth Circuit, Docket No. 94-80469, alleging this further compounding of judicial misconduct.

11. That any further proceeding in this appeal, without addressing the questions raised and pending resolution, as aforesaid, will be in direct violation of federal statute, in direct violation of

the Code of Judicial Conduct, and in direct contempt of Congress and the law. That such violations are committed knowingly, willingly, and intentionally, in deliberate disregard of my rights.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 17th day of January, 1995, at Los Angeles, California.

/s/____________________
RONALD BRANSON, Appellant

Exhibits attached.

SUPPLEMENT TO COMPLAINT OF JUDICIAL MISCONDUCT
(Minus Exhibits)

JUDICIAL COUNCIL OF THE NINTH CIRCUIT SUPPLEMENT TO COMPLAINT OF JUDICIAL MISCONDUCT
(Title 28 U.S.C. §372(c))
Docket No. 94-80469
CERTIFIED MAIL - RETURN RECEIPT REQUESTED - # P-498 824 906

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, RONALD BRANSON, declare and say:

1. That the facts herein stated are personally known to me to be true, and that I could competently testify thereto if called upon as a witness to do so; that other matters herein stated of a conclusory nature are based on my opinion, information, and belief, and as to those matters, I believe them to be true.

2. That I am the complainant in the Complaint of Judicial Misconduct assigned Docket Number 94-80469; that I hereby supplement that Complaint citing an additional act that has taken place since the filing of the original Complaint involving further misconduct related to that of which complaint has already been made.

3. That on January 12, 1995, the Clerk informed me by letter, a copy of which is attached hereto as "EXHIBIT (1)" and made a part hereof, that "The United States Court of Appeals for the Ninth Circuit is considering submission of your case without oral argument."

4. That I stated in my declaration supporting the original Complaint, at paragraph 13, "That the reason I am bringing this matter to the attention of the Judicial Council is that I anticipate that the Ninth Circuit judges involved will disregard the motion for rehearing by denying it without comment and will continue its 'avoidance maneuvers' by evading the facts and foreclosing this motion redress and request that the Judicial Council correct the problems before they are further compounded."

5. That I have not yet received a ruling on my motion for rehearing of the recusal motion, a copy of which has been presented

with the original Complaint.

6. That I received the letter attached hereto as EXHIBIT (1) which has the substance and effect of carrying out the very judicial misconduct I predicted would be done by the Ninth Circuit.

--1--

7. That apparently the judges on the panel before whom the motion for rehearing is pending, namely, Judges D.W. NELSON, HALL, and TROTT, instructed the Clerk to send the letter shown as EXHIBIT (1), informing me that the court is considering submission of the appeal without oral argument, despite the fact that the motion for rehearing is pending.

8. That the original Complaint named only Judges NELSON and HALL in this regard, but that to my knowledge, Judge TROTT has not yet recused himself from this matter based on our personal friendship explained in my supporting declaration, Paragraph 9.

9. That I have filed concurrently herewith my objection to the submission of this appeal in the absence of the resolution of the questions pending in my motion for rehearing, a copy of which objection, minus its exhibits, is attached hereto as "EXHIBIT (2)" and made a part hereof.

10. That I reiterate the purpose for bringing this matter to the Judicial Council is to correct problems already existing in this case ***before they are further compounded.***

11. That as shown by the letter dated January 12, 1995 from the Clerk [EXHIBIT (1)], the problems are being further compounded in Appeal No. 94-55951.

12. That it appears that there is an attempt being made to do an out of bounds end run around the problems facing "The United States Court of Appeals for the Ninth Circuit", January 12th letter; that I now anticipate that this appeal is going to be railroaded through regardless of the problems described in my original Complaint of Judicial Misconduct and its accompanying documents.

13. That the conditions described in the original Complaint are further exacerbated by the latest "move" shown by the January 12th letter, and that they will continue to grow until the problems are corrected.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 17th day of January, 1995, at Los Angeles, California.

/s/____________________________
RONALD BRANSON, Complainant

Exhibits attached.

-----------------------------------2-----------------------------------

EXCEPTION TO ORDER OF JANUARY 19, 1995
(Minus Exhibit)

United States Court Of Appeals
For The Ninth Circuit

Case No. 94-55951

RONALD BRANSON

Plaintiff and Appellant

vs.

BETTY B. FLETCHER, personal capacity; DIARMUID F. O'SCANNLAIN, personal capacity; ANDREW J. KLEINFELD, personal capacity; WILLIAM D. KELLER, personal capacity,

Defendants and Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
Honorable MANUEL L. REAL, District Judge
No. CV 94-1932-R

EXCEPTION TO ORDER FILED JANUARY 19, 1995
(filed concurrently with Second Supplement to Complaint of Judicial Misconduct – Docket No. 94-80469)

RONALD BRANSON
Plaintiff/Appellant
10853 White Oak Avenue
Granada Hills, CA 91344
(818) 446-8356

EXCEPTION TO ORDER FILED JANUARY 19, 1995
(filed concurrently with Second Supplement to Complaint of Judicial Misconduct – Docket No. 94-80469)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED -
# P-498 824 908

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, RONALD BRANSON, declare and say:

1. That I am the appellant herein; that all facts herein stated are personally known to me to be true and that I could competently testify thereto if called upon as a witness to do so; that other matters herein stated of a conclusory nature are based on my opinion, information, and belief, and as to those matters, I believe them to be true.

2. That I hereby except to the Order filed January 19, 1995 by Circuit Judges D.W. NELSON, HALL, and TROTT, a copy of which is attached hereto as "EXHIBIT 2A" and made a part hereof, stating "Appellant's motion for reconsideration of this court's December 9, 1994 order [*sic*] is denied."

3. That I did not file a "motion for reconsideration of this court's December 9, 1994 order", but a "Motion for Rehearing of Recusal Motion" under the **REQUIRED procedures** contemplated by Title 28 U.S.C. §455(a) interpreted and established by the U.S. Supreme Court, **which this court has failed and NOW REFUSES to perform,** in which I made four points of exception to the December 9th order.

4. That I make this Exception to the January 19th Order on the identical bases as my Exception to the December 9th Order, made by the same judicial panel, which are as follows:

(a) Appellant's first exception is to the court's "constru[ing]" the "Declaration of Appellant Ronald Branson" as a "motion for default judgment."

(b) Appellant's second exception is to the court's evasion of the issue of standing of the "appellees" to appear in this appeal, which evasion appears to be an intentional tactical

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maneuver of avoidance by the court's unfounded conversion of appellant's declaration, initially bringing the issue of standing to the court's attention, into what the court chose to label "a motion for default judgment."

(c) Appellant's third exception to the Order [of December 9th] is the court's failure to address the conflict of interest issue to which the motion for recusal of the Ninth Circuit was specifically directed.

(1) First conflict cited: Three of the defendants [appellees] are themselves Ninth Circuit judges.

(2) Second conflict cited: The impropriety of the Ninth Circuit contacting the U.S. Attorney's Office and inviting it into this appeal on behalf of appellees.

(3) Third conflict cited: The judges of the Ninth Circuit, who would sit in judgment of this appeal, share the same legal counsel of the U.S. Attorney's Office, as do the defendants [appellees].

(d) Appellant's fourth exception to the Order [of December 9th] is the failure of the Ninth Circuit to carry out this "critically important" function [of identifying the facts that might reasonably cause an objective observer to question impartiality in deciding the Motion for Recusal under Title 28 U.S.C. §455(a)].

5. That in addition to citing the above points of exception to the December 9th Order, regarding my motion for ***rehearing of the recusal motion*** I requested the court to do the following:

(a) Appellant requests that the standing issue be determined by law.

(b) Appellant requests that the conflict arising out of Ninth Circuit judges as defendants be addressed and resolved by the court.

(c) This court must address the conflict involving their impropriety of contacting the U.S. Attorney's Office in violation of the Code of Judicial Conduct and inviting it to appear.

(d) Appellant requests that the court address and resolve the conflict of interest involving the status of the U.S. Attorney's Office as legal counsel for the appellees herein, being the same as that of the Ninth Circuit judges who would be the reviewing tribunal of this appeal --the court and appellees having the same legal counsel.

> (e) Appellant requests that any other conflicts of interest that are mentioned in the [recusal] motion, or even if not mentioned, be discussed and evaluated under §455(a).
>
> (f) Whether or not it can or will be done fairly, this court at a minimum **must** "identify the facts that might reasonably cause an objective observer to question impartiality."

6. That **"denied"** does not respond to these **REQUIRED** issues; the Order of January 19th [EXHIBIT 2A attached] does not even ***acknowledge*** what was brought before the court.

7. That as a proximate result of the December 9th Order by which the Ninth Circuit Court ***refuses to acknowledge*** the grounds for recusal made under §455(a) -- creating a "Checkmate" -- I was forced to bring a Complaint of Judicial Misconduct under Title 28 U.S.C. §372(c) before the Judicial Council of the Ninth Circuit, assigned Docket No. 94-80469, in order to untangle the web that has been spun by the federal judiciary over the past seven years, creating the very cocoon in which this Court has now become ensnared and unable to proceed according to law.

8. That I stated in my supporting declaration for said Complaint, in paragraph 13, that the reason for bringing this matter to the attention of the Judicial Council is that I anticipate that the Ninth Circuit judges involved will disregard my motion for rehearing by denying it without comment and will continue its "avoidance maneuvers" by evading the facts and foreclosing this motion redress and request that the Judicial Council ***correct the problems before they are further compounded.***

9. That since I made that statement on December 17, 1994, there has been two incidents of further compounding of the very misconduct complained of.

10. That on January 18, 1995, I mailed to the Ninth Circuit Court my "Objection to Submission of Appeal" wherein I explained by declaration my objection to a letter dated January 12, 1995 which states "The United States Court of Appeals for the Ninth Circuit is considering

submission of your case...." while there was still pending and undecided my Exception to the Order filed December 9, 1994, and

Motion for Rehearing of the Recusal Motion.

11. That I listed the questions that were still pending and stated that before this appeal can proceed at all, those questions must first be addressed and resolved by the court.

12. That I filed concurrently therewith a Supplement to the Complaint of Judicial Misconduct alleging the further compounding of judicial misconduct.

13. That the second incident of compounded judicial misconduct, since the filing of the Complaint with the Judicial Council to halt further misconduct, is the subject Order of January 19, 1995 [EXHIBIT 2A attached].

14. That my prediction that the Ninth Circuit would disregard my motion for rehearing of the recusal motion and deny it without comment, continuing its "avoidance maneuvers" and evading the facts and foreclosing this motion redress, has now proved true, as evidenced by this Order of January 19th.

15. That as a proximate result of this January 19th Order, I am forced to now file a Second Supplement to the Complaint of Judicial Misconduct concurrently herewith.

16. That as my original Complaint of Judicial Misconduct shows, I did not name Judge TROTT in the Complaint out of personal respect for him as an individual whom I have known long before he obtained his judgeship; that I strongly suggested on the record that "Steve" as I know him, recuse himself from this entire debacle on a personal basis.

17. That I am surprised that Steve has ***not recused himself*** nor responded, pro or con, to my suggestion as a friend.

18. That it is with great hesitance and reluctance I must now, under the circumstances, add the name of Judge STEPHEN S. TROTT as participating in this intolerable misconduct, in light of this current development.

19. That until this entire matter is straightened out, further conduct by the Ninth Circuit will be a ***sham*** conducted by ***judicial fiat*** in direct contempt of Congress and of the law, as the record, upon which I rely, shows.

20. That in the interest of halting the repeated and continuing judicial misconduct now going on herein, I am specifically

requesting, in my Second Supplement to the Complaint of Judicial Misconduct, that the Judicial Council of the Ninth Circuit ***stay all further conduct until this matter is straightened out,*** thereby avoiding the need for constantly "chasing" one misconduct after another with a corresponding complaint to the Judicial Council.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 23rd day of January, 1995, at Los Angeles, California.

/s/______________________________
RONALD BRANSON, Appellant

SECOND SUPPLEMENT TO COMPLAINT OF JUDICIAL MISCONDUCT

(Minus Exhibits)

JUDICIAL COUNCIL OF THE NINTH CIRCUIT SECOND SUPPLEMENT TO COMPLAINT OF JUDICIAL MISCONDUCT

(Title 28 U.S.C. §372(c))

Docket No. 94-80469

CERTIFIED MAIL - RETURN RECEIPT REQUESTED -
# P-498 824 909

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, RONALD BRANSON, declare and say:

1. That the facts herein stated are personally known to me to be true, and that I could competently testify thereto if called upon as a witness to do so; that other matters herein stated of a conclusory nature are based on my opinion, information, and belief, and as to those matters, I believe them to be true.

2. That I am the complainant in the Complaint of Judicial Misconduct assigned Docket Number 94-80469; that I hereby present a ***Second*** Supplement to that Complaint citing additional and further judicial misconduct to that of which complaint has already been made and supplemented.

3. That I hereby add to Item 2 of the original Complaint, "Judges complained about" the name of STEPHEN S. TROTT, U.S. Court of Appeals for the Ninth Circuit and include herewith copies of all previous documents for distribution to him.

4. That I stated in Paragraph 9 of my supporting declaration to the original Complaint that I suggested Judge TROTT, named on the December 9th Order, recuse himself as my personal friend, for the reasons set forth in my declaration supporting the Exception to Order Filed December 9, 1994, and Motion for Rehearing of Recusal Motion, accompanying the Complaint; that accordingly I did not, for friendship sake, include him in said Complaint.

5. That it is with great reluctance and deep regret that I am now forced to add Judge TROTT to the original Complaint as a direct and proximate result of the Order filed January 19, 1995, a copy of which is attached hereto as "EXHIBIT 2A" and made a part hereof;

and that in so

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doing, I make a distinction between "Judge TROTT" whom I don't personally know and "Steve Trott" whom I do as I stated in previous documentation accompanying the original Complaint.

6. That I file concurrently herewith my Exception to Order Filed January 19, 1995, a copy of which (the declaration alone) is attached hereto as "EXHIBIT 2B" and made a part hereof, which fully describes the circumstances surrounding that Order of January 19th.

7. That my declaration attached as EXHIBIT 2B sets forth the second incident of judicial misconduct, compounding that to which complaint has already been made to the Judicial Council. That unless the Council otherwise directs, I do not repeat my statements made in EXHIBIT 2B here, but incorporate them by reference as if fully set forth herein.

8. That I stated in my declaration supporting the original Complaint, at Paragraph 13, and repeated in Paragraph 4 of my first Supplement, "That the reason I am bringing this matter to the attention of the Judicial Council is that I anticipate that the Ninth Circuit judges involved will disregard the motion for rehearing by denying it without comment and will continue its 'avoidance maneuvers' by evading the facts and foreclosing this motion redress and request that the Judicial Council correct the problems before they are further compounded."

9. That as shown by the Order of January 19th [EXHIBIT 2A attached], my prediction has now come to pass, and indeed the Ninth Circuit judges involved **did disregard my motion for rehearing the recusal motion** by (1) ***refusing to acknowledge the existence of the motion*** which was presented; (2) mislabeling it as a "motion for reconsideration of this court's December 9, 1994 order" ***which it was not***, as fully explained in EXHIBIT 2B attached; and (3) denying without comment the non-existent motion labeled as aforesaid. That indeed they **did in fact continue the court's "avoidance maneuvers" by evading the facts presented to them** as I have outlined in EXHIBIT 2B and **have indeed foreclosed the motion redress process** --the latest in a series of procedural foreclosures to the federal adjudicatory processes as stated in

Paragraph 12 of my supporting declaration to the original Complaint.

10. That I again reiterate, as I did in Paragraph 10 of my first Supplement, that the purpose for bringing this matter to the Judicial Council is to correct problems already existing in this case ***before they are further compounded.***

11. That until the Court ***acknowledges the existence of the problems*** that have been presented before it on the record, the problems will **not** be corrected in the normal course of proceeding but, if left to the Court, will continue on in ever-compounding fashion as they have for years up to this point.

12. That as shown by the Clerk's letter of January 12, 1995, explained in my first Supplement to the Complaint; and now by the Order filed January 19, 1995, explained in my declaration attached hereto as EXHIBIT 2B as part of this Second Supplement to the Complaint, the misconduct is spewing forth unabated, compounding the judicial misconduct which has already disfigured this case beyond recognition; that accordingly, I respectfully request that the Judicial Council issue a ***stay of any further proceedings in this case, No. 94-55951,*** until such time as the existing problems are corrected so that the case can proceed **according to law** and not by fiat.

13. That as the case now stands, the Court is already threatening to "submit [this] case without oral argument" to which I have objected and made part of my first Supplement; that as I stated in Paragraph 6 of my supporting declaration to that Objection "the Ninth Circuit Court, in its current state of denial, is now railroading this appeal through a ***sham briefing schedule*** and a ***sham submission of the case*** while the serious questions raised are ignored by the Court and remain unresolved in violation of my rights to fair and lawful procedures" **and which is now a certainty** as evidenced by the latest move --the January 19th Order [EXHIBIT 2A].

14. That unless the Judicial Council intervenes, further disaster and injustice is sure to result.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 23rd day of January, 1995, at Los Angeles, California.

/s/____________________________

RONALD BRANSON, Complainant

Exhibits attached.

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EXCEPTION TO MEMORANDUM OF FEBRUARY 27, 1995
(Minus Exhibit)

United States Court Of Appeals
For The Ninth Circuit

Case No. 94-55951

RONALD BRANSON

Plaintiff and Appellant

vs.

BETTY B. FLETCHER, personal capacity; DIARMUID F. O'SCANNLAIN, personal capacity; ANDREW J. KLEINFELD, personal capacity; WILLIAM D. KELLER, personal capacity,

Defendants and Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
Honorable MANUEL L. REAL, District Judge
No. CV 94-1932-R

EXCEPTION TO MEMORANDUM FILED FEBURARY 27, 1995
(filed concurrently with Third Supplement to Complaint of Judicial Misconduct – Docket No. 94-80469)

RONALD BRANSON
Plaintiff/Appellant
10853 White Oak Avenue
Granada Hills, CA 91344
(818) 446-8356

EXCEPTION TO MEMORANDUM FILED FEBRUARY 27, 1995 (filed concurrently with Third Supplement to Complaint of Judicial Misconduct - Docket No. 94-80469)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED - #P-498-824-912

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, RONALD BRANSON, declare and say:

1. That I am the appellant herein; that all facts herein stated are personally known to me to be true and that I could competently testify thereto if called upon as a witness to do so; that other matters herein stated of a conclusory nature are based on my opinion, information, and belief, and as to those matters, I believe them to be true.

2. That I hereby except to the Memorandum filed February 27, 1995, before Circuit Judges SCHROEDER, CANBY and LEAVY, a copy of which is attached hereto as "EXHIBIT 3A" and made a part hereof as evidence of its existence only and not of its contents or statements therein.

3. That I file this Exception to Memorandum concurrently with my Third Supplement to Complaint of Judicial Misconduct, Docket No. 94-80469, wherein I am forced to add the names of MARY M. SCHROEDER, WILLIAM C. CANBY, JR., and EDWARD LEAVY, Circuit Judges of the Ninth Circuit Court of Appeals, due to their proceeding with such Memorandum filed in this appeal, Case No. 94-55951, BRANSON v. FLETCHER, et al.

4. That I make this Exception to the February 27th Memorandum on the identical bases as the Exception to the December 9th Order and the Exception to the January 19th Order, which I again set forth on this record, as follows:

> (a) Appellant's first exception is to the court's having arbitrarily and capriciously "constru[ed]" the "Declaration of Appellant Ronald Branson" as a "motion for default judgment" in the Order of December 9, 1994, without citing any authority or basis for doing so, despite appellant's exception to said Order dated December 15, 1994 which is part of this record.

> (b) Appellant's second exception is to the court's evasion of

the issue of standing of the "appellees" to appear in this appeal, which evasion is now shown to be an intentional tactical maneuver of avoidance by the court's unfounded conversion of appellant's declaration, initially bringing the issue of standing to the court's attention, into what the court chose to label "a motion for default judgment."

(c) Appellant's third exception to the Memorandum of February 27, 1995 is the court's failure to address the conflict-of-interest issue to which the Motion for Recusal of the Ninth Circuit, on file herein, is specifically directed, to wit:

(1) First conflict cited: Three of the defendants are themselves Ninth Circuit judges.

(2) Second conflict cited: The impropriety of the Ninth Circuit unilaterally contacting the other side, to wit, the U.S. Attorney's Office and inviting it into this appeal on behalf of the non-appearing defendants.

(3) Third conflict cited: The judges of the Ninth Circuit, who would sit in judgment of this appeal (now shown to be SCHROEDER, CANBY and LEAVY), share the same legal counsel of the U.S. Attorney, as do the defendants.

(d) Appellant's fourth exception to the Memorandum filed February 27, 1995 is the continuing failure and now deliberate refusal of the Ninth Circuit Court to carry out the "critically important" function, described by the U.S. Supreme Court in *Liljeberg v. Health Services Acquisition Corp.* (1988) 486 U.S. 847, 865. cited by appellant on page 4 of his Motion for Recusal of the Ninth Circuit, as "identify[ing] the facts that might reasonably cause an objective observer to question... impartiality" in order to decide and properly dispose of the Motion for Recusal as the Court is required to do under Title 28 U.S.C. §455(a).

5. That Circuit Judges SCHROEDER, CANBY and LEAVY deliberately disregarded the law cited in those exceptions requiring such procedures for the Ninth Circuit Court to follow before proceeding further in this Appeal, No. 94-55951, when filing the Memorandum of February 27, 1995.

6. The Ninth Circuit Court has again refused to acknowledge the several improprieties brought to its attention, ignoring the required formal decision-making process under Title 28 U.S.C. §455(a), and thus compounding the judicial misconduct that has already plagued this Appeal No. 94-55951, as reported to the Judicial Council, Docket No. 94-80469.

7. That I have repeatedly requested the Ninth Circuit Court to do the following:

(a) Determine the standing issue as a matter of law;

(b) Address and resolve the conflict arising out of Ninth Circuit judges being defendants;

(c) Address and resolve the conflict involving the impropriety of the Ninth Circuit Court having unilaterally contacted the U.S. Attorney's Office in violation of the Code of Judicial Conduct, and inviting that Office to appear in this appeal;

(d) Address and resolve the conflict involving the status of the U.S. Attorney's Office as legal counsel for the non-appearing defendants in this appeal, being the same legal counsel as that of the Ninth Circuit judges reviewing and deciding this appeal --the court and the defendants having the same legal counsel;

(e) Discuss and evaluate under the standards set forth in Title 28 §455(a) all other conflicts of interest that exist, whether or not mentioned in the recusal motion;

(f) Identify the facts that might reasonably cause an objective observer to question the impartiality of the Ninth Circuit Court of Appeal in this appeal, Case No.94-55951, as this Court absolutely must do under the standards established by the U.S. Supreme Court.

8. That the Ninth Circuit Court has ignored ***all of the above,*** and has acted in direct contempt of Congress and the law pertaining thereto.

9. That the Memorandum filed February 27, 1995, has exacerbated the problem that already exists, as aforesaid, further complicating and expanding the Complaint of Judicial Misconduct on file before the Judicial Council of the Ninth Circuit, now adding

three more federal judges to the list.

10. That clearly I am precluded by law from attacking the merits of the decision or seeking relief from the Ninth Circuit Court in this Appeal, No. 94-55951, until the jurisdictional issue of the underlying Motion for Recusal is disposed of according to law; I do not waive my right to seek proper relief at such time as it becomes appropriate.

11. That Case No. 94-55951 will remain in limbo, without a remedy, until the Judicial Council takes whatever steps are necessary to resolve the impasse and get the case back on track as has been fully described and presented in Docket No. 94-80469.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 9th day of March, 1995, at Los Angeles, California.

/s/

RONALD BRANSON, Appellant

THIRD SUPPLEMENT TO
COMPLAINT OF JUDICIAL MISCONDUCT
(Minus Exhibits)

JUDICIAL COUNCIL OF THE NINTH CIRCUIT
THIRD SUPPLEMENT TO COMPLAINT OF JUDICIAL MISCONDUCT

(Title 28 U.S.C. §372(c))

Docket No. 94-80469

CERTIFIED MAIL - RETURN RECEIPT REQUESTED - # P-498 824 911

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, RONALD BRANSON, declare and say:

1. That the facts herein stated are personally known to me to be true, and that I could competently testify thereto if called upon as a witness to do so; that other matters herein stated of a conclusory nature are based on my opinion, information, and belief, and as to those matters, I believe them to be true.

2. That I am the complainant in the Complaint of Judicial Misconduct assigned Docket Number 94-80469; that I hereby present a ***Third*** Supplement to that Complaint citing additional and further judicial misconduct to that of which complaint has already been made and supplemented.

3. That I hereby add to Item 2 of the original Complaint, "Judges complained about" the names of MARY M. SCHROEDER, WILLIAM C. CANBY, JR., and EDWARD LEAVY, U.S. Court of Appeals for the Ninth Circuit and include herewith copies of all previous documents for distribution to them.

4. That as I reiterated in Paragraph 10 of my Second Supplement, as well as Paragraph 10 of the first Supplement, to the Complaint, the purpose for bringing this matter to the Judicial Council is to correct problems already existing in this case ***before they are further compounded.***

5. That this Third Supplement to the Complaint is now necessitated by the "MEMORANDUM" filed February 27, 1995, a copy of which is attached hereto as "EXHIBIT 3A" and made a part hereof for evidentiary purposes only, but not acknowledging its contents.

6. That I file concurrently herewith my Exception to

Memorandum Filed February 27, 1995, a copy of which is attached hereto as "EXHIBIT 3B" and made a part hereof.

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7. That my Second Supplement to the Complaint, mailed January 23, 1995, fully explains the circumstances as they then existed regarding Appeal No. 94-55951; that in Paragraph 12 of the Second Supplement, I specifically requested the Judicial Council issue a ***stay of any further proceedings in case No. 94-55951***, until such time as the existing problems are corrected so that the case can proceed **according to law** and not by fiat; I stated there that "the misconduct is spewing forth unabated, compounding the judicial misconduct which has already disfigured this case beyond recognition."

8. My final statement in that document states "That unless the Judicial Council intervenes, further disaster and injustice is sure to result." That preceding that statement, I said in Paragraph 13 of the Second Supplement, as I had stated before, "the Ninth Circuit Court, in its current state of denial, is now railroading this appeal through a ***sham briefing schedule*** and a ***sham submission of the case*** while the serious questions raised are ignored by the Court and remain unresolved in violation of my rights to fair and lawful procedures" **and which is now a certainty.**"

9. That certainty has now taken place; the Ninth Circuit Court of Appeal, under the authority of Circuit Judges SCHROEDER, CANBY and LEAVY, whose names I now add to my Complaint of Judicial Misconduct, has carried out its mission-- that of railroading through this appeal despite the serious issues regarding several improprieties and acts of judicial misconduct which are the subject of a motion for recusal of the Ninth Circuit pursuant to Title 28 U.S.C. §455(a).

10. That the problems originally presented to the Judicial Council last December have not been resolved, or even acknowledged; instead, the problems have compounded as I have warned; the "MEMORANDUM" (EXHIBIT 3A) is a total ***sham*** and a disgrace to the judicial process in light of the record in this case.

11. That the bases for my current Exception (EXHIBIT 3B) are identical to those of my previous two exceptions filed in this case,

which I again repeat are as follows:

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(a) Appellant's first exception is to the court's having arbitrarily and capriciously "constru[ed]" the "Declaration of Appellant Ronald Branson" as a "motion for default judgment."

(b) Appellant's second exception is to the court's evasion of the issue of standing of the "appellees" to appear in this appeal, which evasion is now shown to be an intentional tactical maneuver of avoidance by the court's unfounded conversion of appellant's declaration, initially bringing the issue of standing to the court's attention, into what the court chose to label "a motion for default judgment."

(c) Appellant's third exception to the Order [of December 9th] is the court's failure to address the conflict of interest issue to which the motion for recusal of the Ninth Circuit was specifically directed.

(1) First conflict cited: Three of the defendants are themselves Ninth Circuit judges.

(2) Second conflict cited: The impropriety of the Ninth Circuit unilaterally contacting the other side, to wit, the U.S. Attorney's Office and inviting it into this appeal on behalf of the non-appearing defendants.

(3) Third conflict cited: The judges of the Ninth Circuit, who would sit in judgment of this appeal [now shown to be SCHROEDER, CANBY and LEAVY] share the same legal counsel of the U.S. Attorney's Office, as do the defendants.

(d) Appellant's fourth exception to the Order [of December 9th] is the failure of the Ninth Circuit to carry out this "critically important" function [of identifying the facts that might reasonably cause an objective observer to question impartiality in deciding the Motion for Recusal under Title 28 U.S.C. §455(a)].

12. That those issues, listed above, have not changed; there is nothing in the "MEMORANDUM" filed February 27, 1995 (EXHIBIT 3A) reflecting a response to those issues; accordingly, the entire case is in a state of "limbo" and will remain so until the

Judicial Council acts.

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13. That the word "**denied**" does not respond to the above issues; nor does that word clear the way for the Ninth Circuit Court of Appeal to forge ahead in Case No. 94-55951 without disposing of the recusal motion as required under Title 28 §455(a).

14. That since my original Complaint on December 17, 1994, there have been now ***three*** incidents of further compounding the same judicial misconduct complained of:

(a) On January 18, 1995, I mailed to the Ninth Circuit Court my "Objection to Submission of Appeal" wherein I objected to a letter dated January 12, 1995, stating "The United States Court of Appeals for the Ninth Circuit is considering submission of your case...." while there was still pending and undecided my Exception to the Order filed December 9, 1994, and Motion for Rehearing of the Recusal Motion;

(b) On January 23, 1995, I mailed to the Ninth Circuit Court my "Exception to Order Filed January 19, 1995" wherein I excepted to the statement made in that order, to wit, "Appellant's motion for reconsideration of this court's December 9, 1994 order is denied" stating that "I did not file a 'motion for reconsideration of this court's December 9, 1994 order' but a 'Motion for Rehearing of Recusal Motion' under the **required procedures which this court has failed and now refuses to perform,** ....";

(c) Today, March 9, 1995, I am mailing to the Ninth Circuit Court my "Exception to Memorandum Filed February 27, 1995" wherein I am excepting to what is purporting to be a decision made in Appeal No. 94-55951, while there is still pending and undecided the issues raised in my Exception to the Order Filed December 9, 1994, and my Motion for Rehearing of the Recusal Motion. This third incident brings in three additional Ninth Circuit judges into the fray, for a total of ***eight federal judges***.

15. That I cannot take any action regarding the "merits" of the purported decision, such as a petition for rehearing, while the current issues stated herein remain unresolved; the merits of the

decision are not reviewable.

16. That I am now awaiting notification of the Chief Judge's action under Rule 4(f) of the Judicial Council Rules.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 9th day of March, 1995, at Los Angeles, California.

/s/______________________________
RONALD BRANSON, Complainant

Exhibits attached.

PERTINENT TEXT OF CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

U.S. Constitution:

Article III, Section 2, Clause 2: In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

Due Process Clause, Fifth Amendment: [SECTION 1.] No person shall be ... deprived of life, liberty, or property, without due process of law;....

Federal Statutes:

28 U.S.C. §455(a): Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

28 U.S.C. §1651(a): The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Code of Conduct for United States Judges: September 22, 1992 (pertinent parts)

Canon 1: A Judge Should Uphold The Integrity And Independence Of The Judiciary. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. ¶COMMENTARY: Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. Although judges should be independent, they should comply with the law, as well as the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law. ¶The Canons are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making decisions. ....

Canon 2: A Judge Should Avoid Impropriety And The Appearance Of Impropriety In All Activities. ***A.*** A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. .... ¶COMMENTARY **Canon 2A.** Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. ¶The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.

Canon 3: A Judge Should Perform The Duties Of The Office Impartially And Diligently. The judicial duties of a judge take precedence over all other activities. In performing the duties prescribed by law, the judge should adhere to the following standards: ¶**A. Adjudicative Responsibilities.** ¶(1) A judge should be faithful to and maintain professional competence in the law,.... ¶(4) A judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* communications on the merits, or procedures affecting the merits, of a pending or impending proceeding. A judge may, however, obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.... ¶(5) A judge should dispose promptly of the business of the court. ¶**C. Disqualification.** ¶(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned,.... ¶¶COMMENTARY **Canon 3A5.** In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. ....

Rules of the Judicial Council of the Ninth Circuit:
Rule 1(a). Purpose of the Procedure. The purpose of the complaint procedure is to improve the administration of justice in the federal courts by taking action when judges engage in conduct that does not meet the standards expected of federal judicial officers or when judges are physically or mentally unable to perform their duties. The law's purpose is essentially forward-looking and not punitive. The emphasis is on correction of conditions that interfere with the proper administration of justice in the courts.

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